SUPREME COURT OF THE UNITED STATES.

Nos. 132, 133, 134.

EDWIN HAIGHT, CLAIMANT OF STEAMSHIP BERMUDA, HER TACKLE, APPAREL, &c., APPELLANT,

vs.

THE UNITED STATES.

No. 133.

ALEXANDER T. BLAKELY, CLAIMANT OF PART OF CARGO OF STEAMSHIP BERMUDA, APPELLANT,

vs.

THE UNITED STATES.

No. 134.

FRAZER, TRENHOLM & CO., CLAIMANTS OF PART OF CARGO OF STEAMSHIP BERMUDA, APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

GOVERNMENT PRINTING OFFICE

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THE UNITED STATES.

No. 133.

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vs.

THE UNITED STATES.

No. 134.

FRAZER, TRENHOLM & CO., CLAIMANTS OF PART OF CARGO OF STEAMSHIP BERMUDA, APPELLANTS,

vs.

THE UNITED STATES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

(No. 64—H F)

Manifest and Freight List of the SS. "Bermuda," C. W. Westendorff master, bound from Liverpool to Bermuda.

Captain's No.	Shippers.	Consignees.	Goods.	Marks.	Nos.	Weights.	Measurement.	Rates.	Freight.	Primage.	Payable there.	Payable here.	Total.
							F. I.	Per ton.	£ s. d.	£ s. d.		£ s. d.	
1	Frazer, Trenholm & Co.	Order.	1 case leather	J G B C	4		45 2	120s.	6 15 6	6 9	.....	7 2 3	
			1 " haberdashery	"	5								
			1 " leather	J G B & B A	22		27 11	"	4 3 9	4 2	.....	4 7 11	
			1 " haberdashery	Georgia	23								
2	.....ditto	...do	3 bales web	[McR]	189, 191, 193		187 8	"	28 3 0	1 8 2	.....	29 11 2	
			1 " thread	"	190								
			5 casks saddlery	"	192, 195, 198								
			2 cases leather	"	194, 199								
3	.....ditto	...do	1 " hosiery	C D G C	101		58 5	"	8 15 3	8 9	.....	9 4 0	
			1 " "	C & Co	.....								
4	.....ditto	...do	5 " millinery	[E] C	1, 5		186 7	"	27 19 9	1 8 0	.....	29 7 9	
			7 " printing materials, (no. 3 duplicated in cabin)	[E] S C	1, 7								
5	.....ditto	...do	6 " stationery	[E]	1, 6		314 11	"	47 4 9	2 7 3	.....	49 12 0	
			5 casks "	"	7, 11								
			2 cases "	"	12, 13								
			1 " "	" C S	8								
			1 bale woollens	O O M Y	50								
			1 case "	"	51								
			4 bales "	"	52, 55								
			12 cases cottons	"	56, 67								
			2 bales woollens	"	68, 69								
			6 cases small wares, &c	"	70, 75								
			3 bales woollens	"	76, 78								
6	.....ditto	...do	1 case "	"	79		1,256 4	"	193 9 0	9 15 11	.....	205 14 11	
			7 " cotton thread, &c	"	85, 91								
			1 " hosiery, &c	"	92								
			2 bales woollens	"	93, 94								
			1 " pasteboards	"	95								
			1 case small wares	"	96								
			9 casks drugs	"	1, 9								
			30 bags cutch	"	10, 39		.....	5s. each.	7 10 0				
7	.....ditto	...do	6 cases, (in transit)	[H]	1, 6		243 1	120s.	36 9 3	1 16 6	.....	38 5 9	
			6 " hardware	[H & W]	19, 24, 28								
8	.....ditto	...do	2 bales sheeting	B G B J A B	1, 2		206 0	"	30 18 0	1 10 11	.....	32 8 11	
			1 case kid gloves	"	3								
			10 " shirting	B G B	1, 10								
			1 bale cotton	[G B B]	1								
			1 case woollens	"	2								
9	.....ditto	...do	1 " shoes	T M B A S B	100		53 5	"	8 0 3	0 8 0	.....	8 8 3	
			2 casks porcelain										

9	ditto	do	1 " shoes	T M B A S B	100			53	5	"	8	0	3	0	8	0	8	8	3
			2 casks porcelain	P L B	579, 80														
10	ditto	do	1 case "	"	581		In transit.	78	4	"	11	15	0	0	11	9	12	6	9
			1 " perfumery	"	582														
			5 boxes cards	C & T R & C G	1, 5														
11	ditto	do	1 case teasels	"	6			204	4	"	30	13	0	1	10	8	32	3	8
			2 casks bichrome	Y W & O	1, 2														
			8 bales woollens	T M W	1, 8														
12	ditto	do	1 truss woollen braid	"	9			286	6	"	42	19	6	2	3	0	45	2	6
			7 bales woollens	"	10, 16														
			1 case needles	[E]	1311														
			1 " pens, pencils, &c	"	1312														
			24 casks hardware	"	1313, 36														
			2 cases haberdashery	"	1437, 38														
13	ditto	do	3 " "	"	1440, 42			337	9	"	50	13	3	5	0	8	105	13	11
			1 " "	"	1, 2														
			2 " hardware	"	1445, 46														
			100 bundles shovels	"	1337, 1436					10*s.* each.	50	0	0						
			11 cases paper	"	1201, 1211														
			14 " soap	"	1212, 1225														
			3 bales woollens	"	1226, 1228														
			5 cases shot	"	1229, 1233														
			1 " stationery	"	1234														
			14 " surgical instruments	"	1235, 1248														
			7 casks "	"	1249, 1255														
14	ditto	do	1 case haberdashery	"	1257			1,286	9	120*s.*	193	0	3	9	13	0	202	13	3
			7 hhds. drugs	"	1257, 1263														
			1 tce "	"	1264														
			12 casks "	"	1265, 1276														
			27 cases "	"	1277, 1303														
			1 cask "	"	1304														
			2 do (or cases) drugs	"	1305, 1306														
			4 bales woollens	[F] M	230, 233														
			5 cases cottons	"	234, 238														
			2 " cotton thread	"	239, 240														
			15 bales cottons	"	241, 255														
			2 cases woollens	"	256, 257														
15	ditto	do	5 " cottons	"	258, 262			1,825	10	"	273	17	6	13	13	11	287	11	5
			10 " cotton thread	"	263, 272														
			13 " cottons	"	273, 285														
			8 " woollens	"	286, 293														
			53 " cottons	"	294, 346														
			3 " hardware, buttons, &c	[H T B]	603, 605														
16	ditto	do	15 " paper	[E] S C	109, 123			150	2	"	22	10	6	1	2	6	23	13	0
			1 " linen thread	[M D]	7														
			2 bales woollens	A McD & Co	141, 147														
17	ditto	do	5 " "	"	13, 17			288	1	"	43	4	3	2	3	3	45	7	6
			1 " blankets	"	208														
			2 " "	C A M D	228, 9														
			16 boxes linen thread	[B]	530, 545														
			70 bales woollens	N S & Co	1, 70														
			2 " blankets	"	257, 8														

Manifest and Freight List of the SS. "Bermuda," C. W. Westendorff master, bound from Liverpool to Bermuda—Continued.

Captain's No.	Shippers.	Consignees.	Goods.	Marks.	Nos.	Weights.	Measurement.	Rates.	Freight.	Primage.	Payable there.	Payable here.	Total.
							F. I.	Per ton.	£ s. d.	£ s. d.		£ s. d.	
18	Frazer, Trenholm & Co.	Order	38 bales blankets	N S & Co	238, 75		5,346 2	120*s.*	801 18 6	40 1 11	.....	842 0 5	
			1 " woollens	C [E]	155								
			20 " blankets & 1 truss samples.	"	156, 175								
			6 cases military caps	A S H	46	T C							
19	.....ditto	...do	5 drums tel. cable	R T	1, 6	10		"	60 0 0	3 0 4	.....	63 7 4	
			1 box joining tools	B			2 4	"	7 0				
			1 bale woollens	C & T D—R	1								
			4 cases shoe thread	C & T	1, 4								
			1 cask hardware	C T C	9308								
			6 cases guns	[H] C & T	358, 63								
			3 " hardware	"	364, 66	22 pkgs., 4	401 7 0	"	60 4 9				
20	.....ditto	...do	2 casks "	"	367, 68	cases steel,				4 0 0	.....	84 0 9	
			1 case "	"	369	1 6 0 0		"	7 16 0				
			3 casks "	B C & T C	174, 176		24 bundles *a*	10*s.* each.	12 0 0				
			4 cases steel	C + T E—H	1, 4								
			1 cask hardware	"	5								
			24 bundles spades	C & T H	1, 24								
			3 rolls wire cloth	R H	1, 3								
			2 bales basil	"	1, 2								
			1 roll wire cloth	C A & R G C	1								
21	.....ditto	...do	1 cask hardware	R T W	1		96 0	120*s.*	14 8 0	14 5	.....	15 2 5	
			1 box "	"	2								
			2 " cotton thread	G B—B	1, 2								
			2 trusses haberdashery	[B] y	1, 2								
22	.....ditto	...do	14 hhds. hose piping	[F]	1, 14		554 7	"	83 3 9	4 3 2	.....	87 6 11	
			10 bales camas	[B]	1, 9, & 12								
23	.....ditto	...do	2 coils rope	"	10, 11		316 1	"	47 8 3	2 7 5	.....	49 15 8	
			4 coiled hawsers	"									
			1 case printing materials	B E E	37								
			1 pkge "	"	64								
			1 case "	"	65								
24	.....ditto	...do	1 " "	"	68		202 6	"	30 7 6	1 10 5	.....	31 17 11	
			7 " "	T D	1, 7								
			6 " "	"	9, 14								
			6 " "	"	16, 21								
			26 " paper	P O D	30, 55								
25	.....ditto	...do	1 " ink	"	56		132 6	"	19 17 6	19 11	.....	20 17 5	
			1 " machinery	"	57								
			9 " printing materials	[J] [R] [H]	21, 9	C							

26	ditto	do	14 ingots block tin	J M B			7 0 13			"	2 2 8		2 2			2 4 10	
27	ditto	do	16 cases hosiery, &c	[A L C] J M P	50, 65			432 2		"	64 16 6	3	4 10			68 1 4	
28	ditto	do	12 " printing materials	E D	1, 12			81 9		"	12 5 3		12 3			12 17 6	
29	ditto	do	7 cases pistols	[N D]	19, 25			17 7		"	2 12 9		2 8			2 15 5	
30	ditto	do	208 coils Manilla rope	G				1,102 6		"	165 7 6	8	5 5			173 12 11	
			240 cases boots	F	1, 240												
			12 " leggings	"	241, 252			2,413 9		"	362 1 3						
31	ditto	do	64 bales hides	[A B] L	1, 64												
			1,723 sides leather	[T]								24	9 0			513 8 3	
			250 " "	[I]			21 3 0 0				126 18 0						
			[One side leather part [T] in dispute.]														
32	J McKean & Co	do	1,200 boxes glass	[E]	1, 1200			1,331 10		"	199 15 6		9 19 9			209 15 3	
			10 chests tea	[J M] B " T	2779, 2788												
			20 boxes "	[D & C S] 27	7594, 7613												
33	Henderson & Beazley	do	6 half chests "	P H [D] W 7	1070, 1075			121 2		"	18 3 6		18 3			19 1 9	
			25 boxes "	[P D] 1	424, 448												
			4 half chests "	W H W F 30	4208, 4211												
			94 bags coffee	P 14													
			122 " "	H 7													
34	Bushby & Co	do	32 " "	D M 8			24 9 3 5			"	146 18 9		7 6 11			154 5 8	
			67 " "	" 17													
			25 " "	" 23													
35	ditto	do	712 bags saltpetre	C B 3			60 5 0 3			"	361 10 2		18 1 6			379 11 8	
			3 barrels bar tin	S	1, 3		12 0 0										
			5 " ingot "	"	3, 8		1 0 2 0										
			128 ingots "	"			1 12 1 3										
			35 pigs lead				2 1 0 0										
36	John Senior & Co	do	8 bundles round iron	X white													
			35 " sheet "	" "			2 1 0 16										
			200 boxes tin plates														
			100 " terne plates				15 17 0 0				145 15 6		7 5 9			153 1 3	
			10 bundles iron wire	S			1 2 0 0										
							24 5 3 19										
			3 cases cannon	3 B G	1, 3												
			1 " "	7½ B G	1		4 2 1 0										
			1 " carriage	"	2		18 1 0										
			60 " shell	5½ B Hol	1, 60												
37	Capt'n Blakely	do	20 " "	7½ B Hol	1, 20		16 16 2 6				154 7 6		7 14 4			162 1 10	
			250 " "	8½ B Hol	1, 250												
			1 " copper tubes	5½ B Perc	1												
			1 " " " fuses	8½ B Perc	1		2 4										
			1 cannon, (loose)	8½ B	1		3 17 0 0										
							25 14 2 10										
			100 cases shell	7½ B Hol	1, 100												
			120 " "	[B]	1, 120		11 1 0 0										
			18 " "	3 B Hol	1, 18												
			41 " "	3 B S E G	1, 41												

Manifest and Freight List of the SS. "Bermuda," C. W. Westendorff master, bound from Liverpool to Bermuda—Continued.

Captain's No.	Shippers.	Consignees.	Goods.	Marks.	Nos.	Weights.	Measurement.	Rates.	Freight.	Primage.	Payable there.	Payable here.	Total.
							F. I.	Per ton.	£ s. d.	£ s. d.		£ s. d.	
			1 case fuses	[B]	1	1 0 0							
			1 " howitzers	3 B G	1	12 0 0							
			2 cases, 4 loose pieces, gun carriage.	5½ B C A R	1,6	10 0 0							
38	Capt'n Blakely	Order	2 cases, 5 loose pieces, Rifling machine.	R M B	1,7	3 10 0 0	.....	120s.	192 12 0	9 12 7	.....	202 4 7	
			1 cannon, (loose)	[B]	1	6 10 0 0							
			1 "	7½ B G	2	3 15 0 0							
			7 field carriages	3 B									
			2 timbers	G	.....	1 5 0 0							
			2 bundles poles, &c										
			2 cases cannon	5½ B	1,2	4 10 0 0							
			2 " "	3 B G	10,11	8 0 0							
						32 2 0 0							
39	Wm. J. Graybrook	...do ..	14 " swords	W J G	1,14	.....	217 9	"	32 13 3	1 12 8	.....	34 5 11	
			3 " "	[W J G]	15,17								
40	.....ditto	...do	4 " "	W J G L	18,21	.....	21 10	"	3 5 6	3 3	.....	3 8 9	
41	.....ditto	...do	70 barrels cartridges	[E]	1,70	3 5 0 0	.....	"	19 10 0	19 6	.....	20 9 6	
			300 " gunpowder	[P]		.....							
			76 half brls. "	[H]		.....							
42	Wm. S. Briggs	...do ..	177 qr. " "	"		.....	19 1 1 25	.....	"	114 8 11	5 14 6	.....	120 3 5
			170 " " "	[H] c		.....							
			2 half " "	x [H] c		.....							
			6 qr. " "	[B]		.....							
						1,5,10,20.1, 30,1,35,40, 1,45.6,50,1, 63,76,80.4, 90,92.94,8, 99,100,110, 120,60,2,91, 93							
43	J. McKean & Co	...do ..	47 cases merchandise	[J T & M]		.....	1,000 0	"	150 0 0	7 10 0	.....	157 10 0	
			5 bales "	"									
44	.....ditto	...do ..	1 case "	P S & Co	6866	.....	8 1	"	1 4 3	1 3	.....	1 5 6	
			1 box "	J T & N M	1								
45	Brown, Shipley & Co	...do	7 cases "	W A & Co V	2147,2153	.....	60 10	"	9 2 6	9 2	.....	9 11 8	
						221 19 3 19	20,898 3	£	4,536 4 3	226 16 6	.....	4,763 0 9	

E. E.—LIVERPOOL, 28*th February*, 1862.

(No. 90, H. F.)

Manifest and Freight List of the , master, bound from to .

Captain's No.	Shippers.	Consignees.	Goods.	Marks.	Nos.	Weights.	Measurement.	Rates.	Freight.	Primage.	Payable there.	Payable here.	Total.
1	Fraser, Trenholm & Co.	Order	1 case leather	J G B C	4								
			1 " haberdashery	"	5								
			1 " leather	J G B & B A	22								
			1 " haberdashery	Georgia	23								
2	ditto	do	3 bales web	[McK]	189, 191, 193								
			1 " thread	"	190								
			5 casks saddlery	"	192, 195, 198								
			2 cases leather	"	194, 199								
3	ditto	do	1 " hosiery	C D C C	101								
			1 " "	C & Co	.....								
4	ditto	do	5 " millinery	E [C]	1, 5								
5	ditto	do	7 " printing materials, (No. 3 duplicate in cabin.)	[E] C S	1, 7								
			6 " stationery	[E]	1, 6								
			5 casks "	"	7, 11								
			2 cases "	"	12, 13								
			1 " "	" C S	8								
6	ditto	do	1 bale woollens	O O M	50								
			1 case "	"	51								
			4 bales "	"	52, 55								
			12 cases cottons	"	56, 67								
			2 bales woollens	"	68, 69								
			6 cases small wares, &c.	"	70, 75								
			3 bales woollens	"	76, 78								
			1 case "	"	79								
			7 " cotton thread, &c.	"	85, 91								
			1 " hosiery, &c.	"	92								
			2 bales woollens	"	93, 94								
			1 " paste boards	"	95								
			1 case smallwares	"	96								
			9 casks drugs	"	1, 9								
			30 bags cutch	"	10, 39								
7	ditto	do	6 cases (in transit)	H	1, 6								
			6 " hardware	[H & W] G	1924, 28								
8	ditto	do	2 bales sheeting	B B J A B	1, 2								
			1 case kid gloves	" B	3								
			10 " shirting	G B	1, 10								
			1 bale cottons	[G B B]	1								
			1 case woollens	"	2								

Captain's No.	Shippers.	Consignees.	Goods.	Marks.	Nos.	Weights.	Measurement.	Rates.	Freight.	Primage.	Payable there.	Payable here.	Total.
9	Fraser, Trenholm & Co.	Order	1 case shoes	T M B A S B	100								
			2 casks porcelain	P B I	579, 80								
10	ditto	do	1 case "	"	581								
			1 " perfumery	" C & T	582								
			5 boxes cards	R & C G	1, 5								
11	ditto	do	1 case teasels	"	6								
			2 casks bichrome	Y W & O	1, 2								
			8 bales woollens	T M W	1, 8								
			1 truss woollen braid	"	9								
12	ditto	do	7 bales woollens	"	10, 16								
			1 case needles	[E]	13, 11								
			1 " pens, pencils, &c.	"	1312								
			24 casks hardware	"	1313, 36								
			2 cases haberdashery	"	1437, 38								
13	ditto	do	3 " "	"	1440, 42								
			1 " "	"	2								
			2 " hardware	"	1445, 46								
			100 bundles shovels	"	1337, 1436								
			11 cases paper	"	1201, 1211								
			14 " soap	"	1212, 1225								
			3 bales woollens	"	1226, 1228								
			5 cases shot	"	1229, 1233								
			1 " stationery	"	1234								
			14 " surgical instruments	"	1235, 1248								
14	ditto	do	7 casks do	"	1249, 1255								
			1 case haberdashery	"	1257								
			7 hhds. drugs	"	1257, 1263								
			1 tce. "	"	1264								
			12 casks "	"	1265, 1276								
			27 cases "	"	1277, 1303								
			1 cask "	"	1304								
			2 do (or cases) drugs	"	1305, 1306								
			4 bales woollens	[F] M	230, 233								
			5 cases cottons	"	234, 238								
			2 " cotton thread	"	239, 240								
			15 bales cottons	"	241, 255								
			2 cases woollens	"	256, 257								
15	ditto	do	5 " cottons	"	258, 262								
			10 " cotton thread	"	263, 272								
			13 " cottons	"	273, 285								

			8 "	woollens	"	286, 293
			53 "	cottons	"	294, 346
			3 "	hardware, buttons, &c.	[H T B]	603, 605
16	ditto	do	15 "	paper	[E] C S	109, 123
			1 "	linen thread	[M D]	7
			2 bales	woollens	A McD & Co	141, 147
			5 "	"	"	13, 17
17	ditto	do	1 "	blankets	"C	208
			2 "	"	A M D	228, 9
			16 boxes	linen thread	[B]	530, 545
			70 bales	woollens	N S & Co	1, 70
			2 "	blankets	"	257, 8
18	ditto	do	38 "	"	"C	238, 75
			1 "	woollens	[F]	155
			20 "	blankets—1 & 1 truss samples	"	156, 175
			6 cases	military caps	A S H	1, 6
			5 drums	tel. cable	R T	
19	ditto	do	1 box	joining tools	B	1, 6
			1 bale	woollens	C & T D R	1
			4 cases	shoe thread	C & T	1, 4
			1 cask	hardware	C T C	9308
			6 cases	guns	[H] C & T	358, 63
			3 "	hardware	"	364, 66
			2 casks	"	"	367, 68
20	ditto	do	1 case	"	"B	369
			3 casks	"	C & T C	174, 176
			4 cases	steel	C & T F H	1, 4
			1 cask	hardware	"C & T	5
			24 bundles	spades	H	1, 24
			3 rolls	wire cloth	R H	1, 3
			2 bales	basils	"	1, 2
			1 roll	wire cloth	C A & R & C	1
21	ditto	do	1 casks	hardware	R T W	1
			1 box	"	"G	2
			2 "	cotton thread	B B	1, 2
			2 trusses	haberdashery	[B] Y	1, 2
22	ditto	do	14 hhds	hose piping	[F]	1, 14
			10 bales	canvas	[B]	1, 9 & 12
23	ditto	do	2 coils	rope	"	10, 11
			4 coiled	hawsers	"	
			1 case	priuting materials	B F F	37
			1 pkge	"	"	64
			1 case	"	"	65
24	ditto	do	1 "	"	"	68
			7 "	"	T D	1, 7
			6 "	"	"	9, 14
			6 "	"	"	16, 21
			26 "	paper	P O D	30, 55
			1 "	ink	"	56
25	ditto	do	1 "	machinery	"	57
			9	printing materials	[J] [R] [H]	21, 9
26	ditto	do	14 ingots	block tin	J N B	

Manifest and Freight List of the , master, bound from to .—Continued.

Captain's No.	Shippers.	Consignees.	Goods.	Marks.	Nos.	Weights.	Measurement.	Rates.	Freight.	Primage.	Payable there.	Payable here.	Total.
27	Fraser, Trenholm & Co,	Order	16 cases hosiery, &c	[A L C] J M P	50, 65								
28	ditto	do	12 " printing materials	E D	1, 12								
29	ditto	do	7 cases pistols	[N D]	19, 25								
30	ditto	do	208 coils Manilla rope	G									
			240 cases boots	F	1, 240								
			12 " leggings	"	241, 252								
31	ditto	do	64 bales hides	[A B] L	1, 64								
			1,723 sides leather	[T]									
			250 " "	[E]									
32	J. McRean & Co	do	1,200 boxes glass	[E]	1, 1200								
			10 chests tea	[J M] B & T	2779, 2788								
			20 boxes "	[D & C S] P 27	7594, 7613								
33	Henderson & Beazley	do	6 half chests "	[D] H 7 W	1070, 1075								
			25 boxes "	[P D] 1	424, 448								
			4 half chests "	H + W W F 30	4208, 4211								
			94 bags coffee	P 14									
			122 " "	H 7									
34	Bushby & Co	do	32 " "	D M 8									
			67 " "	" 17									
			25 " "	" 23									
35	ditto	do	712 bags saltpetre	C B 3									
			3 barrels bar tin	S	1, 3								
			5 " ingot "	"	3, 8								
			128 ingots "	"									
			35 pigs lead										
36	John Senior & Co	do	8 bundles round iron	X white									
			35 " sheet "	" "									
			200 boxes tin plates										
			100 " terne plates										
			10 bundles iron ware	S									
			3 cases cannon	3 B G	1, 3								
			1 " "	7½ B G	1								
			1 " carriage	11	2								
			60 " shell	5½ B Hol	1, 60								
			20 " "	7½ B Hol	1, 20								
			250 " "	8½ B Hol	1, 250								
			1 " copper tubes fuses	5½ B Perc	1								
			1 " " "	9½ B Perc	1								
			1 cannon (loose)	8½ B	1								
			100 cases shell	7½ B Hol	1, 100								

			120 " "	[B] 3 B	1,120
			18 " "	Hol	1,18
			41 " "	3 B S E G	1,41
			1 " fuses	[B]	1
			1 " howitzers	3 B G 1	1
			2 cases, 4 loose pieces } gun carriage	5½ B C A R	1,6
38	ditto	do	3 cases, 5 loose pieces } rifling machines	R M B	1,7
			1 cannon (loose)	[B]	1
			1 " "	7½ B G	2
			7 field carriages	3 B	
			2 limbers		
			2 bundles poles, &c	G	
			2 cases cannon	5½ B G	1,2
			2 " "	3 B G	10,11
			14 " swords	W J G	1,14
39	Wm. J. Grazbrook	do	3 " "	[W G]	15,17
40	ditto	do	4 " "	W J G L	18,21
41	ditto	do	70 barrels cartridges	[E]	1,70
			300 " gunpowder	[P]	
			76 half brls "	[H]	
			177 qr " "	"	
42	Wm. S. Briggs	do	170 " " "	[H] C	
			2 half " "	+ [H] C	
			6 qr " "	[B]	
43	J. McRean & Co	do	47 cases merchandise	[J T & N]	1, 5, 10, 20, 1, 30, 1, 35, 40, 1, 45, 6, 50, 1, 63, 16 80, 4, 90, 92 94, 8, 99, 100, 110, 120
			5 bales "	"	60, 2, 91, 93
			1 case "	P S & Co	68, 66
44	ditto	do	1 box "	J T & N M	1
45	Brown, Shipley & Co	do	7 cases "	W A & Co v	2147, 2153

In transit ex. "Ella" from Liverpool.

120 rolls bagging, 1,461 bags coffee, 217 half chests tea, 180 coils ropes, 5 bales twine.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,, ss:

I certify the foregoing to be true copies of papers headed "Manifest and Freight List, &c.," as the same remain among the papers of the steamship or vessel called the Bermuda, in the office of the clerk of the district court of the United States in and for the eastern district of Pennsylvania.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twentieth day of October, [SEAL] A. D. 1864, and in the eighty-ninth year of the independence of the said United States.

CHARLES S. LINCOLN,
Pro Clerk Dist. Ct. U. States.

Jul

Supreme Court of the United States.

Nos. 254, 255, 256.

THE BERMUDA.

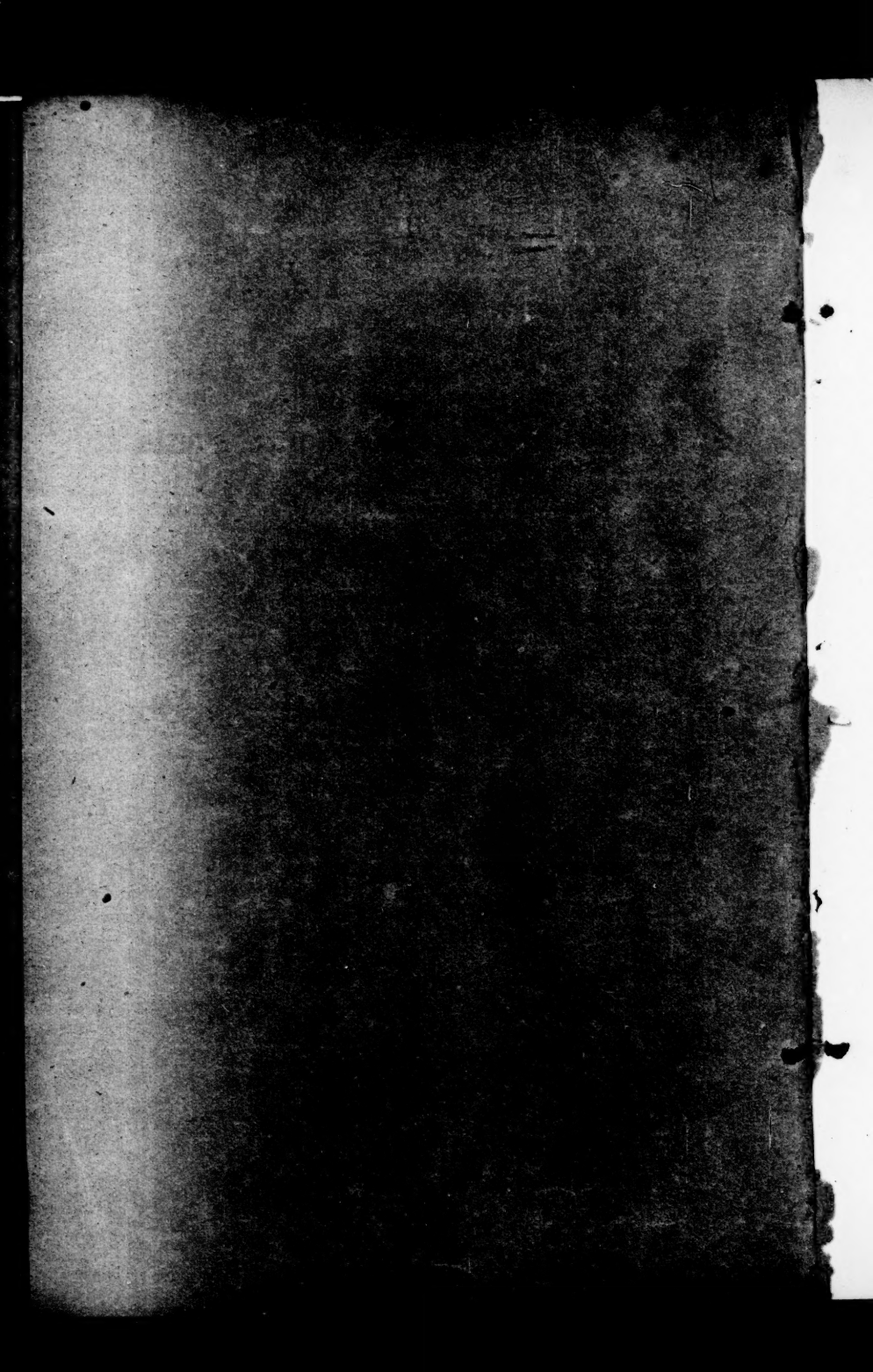
EDWIN HAIGH AND OTHERS, APPELLANTS,

vs.

THE UNITED STATES.

BRIEF OF THE APPELLANTS.

E. C. Markley & Son, Printers, Goldsmiths Hall, Library Street, Philadelphia.



If neutral puts property in enemy trade it forfeits neutral character but such employment must be confined for reasonable time to impress other char

THE BERMUDA.

HISTORY OF THE CASE.

The Bermuda, a British owned and registered steamer, unarmed, on a voyage from Bermuda to Nassau, on the 27th of April, 1862, was captured by the United States steamer Mercedita. When captured, she was close in with the Eastern coast of Great Abaco Island, an English colony, and steering along the coast, *not* in the route to any of our ports, but in a south-westerly direction, across the Providence North East Channel between Abaco and Eleuthera (another English island,) to New Providence (Nassau,) a third English colony. She was captured in British waters, within sight of land and the range of the Abaco light. The exact distance was four and a quarter miles from the shore. The British flag was flying at the time of the capture, and was not hauled down until the prize was taken a distance of twenty or thirty miles further out to sea. It is not pretended that her immediate destination was to any blockaded port. In fact, being on the eastern side of the Bahama group, she was in a line as the bird flies, 160 miles from the coast of Florida, 410 miles from Savannah, 430 miles from Charleston, and 480 miles from Wilmington, N. C. The Mercedita was cruising in, and in fact blockading the Abaco entrance to Nassau. It is in proof that the Mercedita had orders to capture the Bermuda *wherever found.* *

Printed Record, p. 9.

Printed Record, p. 25.

p. 9, 19, 27.

The Bermuda was bound to Nassau under orders to discharge her cargo and return to Europe.

Printed Record, p. 122.

* See correspondence of Lord Lyons and Mr. Seward, in August, 1862, after the capture, in which these general orders referring to a list were rescinded. Parliamentary papers, No. 5, 1863. Portions of this correspondence will be found *infra* p. 31.

The Bermuda was built at Stockton upon Tees in the kingdom of Great Britain, owned (as she was at the time of the capture,) by an English subject, Edwin Haigh, the claimant. Her registry in due form, according to the Acts of Parliament, was dated 2d of August, 1861.

Printed Record, p. 104.

In August, 1861, when it was supposed that the blockade might be raised, or be relaxed, Mr. Haigh executed a power of attorney to A. S. Hanckel and George A. Trenholm, of Charleston, South Carolina, authorizing them or either of them to sell the ship at any place out of the kingdom, within twelve months of the date of the power. This power is called a certificate. It is but a power, and conveyed no title. Under this power, in August, 1861, the Bermuda sailed for Charleston, but finding it blockaded, went to Savannah. Her captain, on this voyage, was not the same person as on the voyage when she was captured. She saw no blockading squadron, was not warned off, arrived safely, and returned to England without breach or contemplated breach of blockade.* The power was intended for this voyage only, but on the return of the ship to England, it was not cancelled, because—the original—the surrender of which is required by law, had been sent to Charleston, and there left. On the return of the ship to England, in January, 1862, Edwin Haigh still retained the ownership and control of the steamer, and was her owner at the time of the capture. Application was made by Mr. Haigh to the Register of shipping at Liverpool for a new certificate of sale to parties at Bermuda or Nassua, with a view to sale at either of those British ports, but the Register declined to issue a new one unless the old certificates were delivered and cancelled. Mr. Haigh is described, as owner, in the shipping articles.

Printed Record, p. 153.
Printed Record, p. 132.
Printed Record, p. 14.
Printed Record, p. 145, 154.
Printed Record, p. 154.
Printed Record, p. 4.

The Bermuda sailed from Liverpool on the 1st of March, 1862, with a general cargo of Manchester goods, groceries, and

Printed Record, p. 133.

* On 3d May, 1861, Lord Lyons informed his Government that Mr. Seward had said that "no vessel was liable to seizure which had not been individually warned."

military stores, under a verbal contract, with Fraser, Trenholm & Co., a Liverpool firm. There was no charter party or special written contract. Mr. Haigh was the owner and shipper of a small part of the cargo (340 bags of coffee.) The steamer had no destination, when she left Liverpool or at any time before the capture, but Bermuda in the first instance and Nassau, ultimately. The cargo was shipped by British subjects and on British account, and so far as the ship was concerned, had no destination for the insurrectionary States, or any of them.

Printed Record, pp. 117, 133.
Printed Record, p. 147.
Printed Record, p. 7.

A portion of the cargo, such as military equipments, were suitable for the Southern market, but they all appeared on the bills of lading and manifest. There was no concealment whatever about them. They were intended for sale at either Bermuda or Nassau. There were passengers on board whose ultimate destination was doubtless South Carolina, but their passage was agreed on in England, and paid as far as Bermuda, and then to Nassau. "My object," says one of them, "in going to Nassau, was to *find* an opportunity to go home." Another, Mr. Pringle, says, he was assured when he agreed to go in her, she was not to run any blockade. In the case of one passenger (Welsh,) the captain of the Bermuda was not to take him, but to assist him in getting a passage, by some other ship, to Charleston. Six passengers, printers and engravers, left the ship at Bermuda, because her destination was *not* to Charleston, or a Southern port. The crew were shipped for a term not exceeding twelve months, from Liverpool to Bermuda, thence, if required to any ports or places in the West Indies, British North America, United States, (by which were meant the States not in revolt) and back to the United Kingdom. The wages were at a rate not exceeding that of ordinary voyages, in peaceful times, without special risk. There were references to agents in British America, Bermuda and Nassau.

Printed Report, p. 12.
Printed Record, p. 17.
Printed Report, p. 20.
Printed Report, p. 20.
Printed Record, p. 36.
Printed Report p. 107.
Printed Record, p. 76.

The captain was instructed by the shippers to proceed to Bermuda and *deliver his cargo*, as per the bills of lading. He was instructed that he would be advised as to a return cargo. The insurance was to Bermuda, and he was to *bring* return

Printed Record, p. 74.

funds in British gold. There was provision made for the possi-
Printed Record, p. 122. bility of carrying his cargo to Nassau, but none for any ulterior destination, none being contemplated as possible. He was to receive instructions from N. T. Butterfield, Hamilton, Bermuda, which he did, to proceed to Nassau and *there discharge his cargo*, being consigned to Adderley & Co. In Bermuda, a small quantity of tea, coffee, sugar, &c., was taken on board from another
Printed Record, p. 84. British ship, the Ella. This was done under orders from Butterfield, who was, to that effect, instructed by John Fraser & Co., in Charleston, who wrote "We will thank you to request the masters to act as follows, viz: captain Westendorff to take in the tea and other light articles from the Ella, (if he has room for them) and proceed to Nassau, reporting himself on arrival there to Messrs. Hy, Adderley & Co." There was no direct
Printed Record, p. 84. communication from the Charleston house to the captain, and even in the order to Butterfield, no instructions of any other
Printed Record, p. 83. destination than Nassau. In another letter to Butterfield, orders are given to insure against fire at Bermuda, not the ship, but the goods, "*whether discharging or discharged.*" At Bermuda,
Printed Record, p. 84. the passengers addressed a letter of thanks to the captain, as their voyage was at an end. It is dated 20th March. The Bermuda and cargo were insured from England to Bermuda. Cargo alone was insured at Bermuda. Insurance to Nassau was afterwards effected.

Thus owned, freighted, and insured, with an immediate destination to Nassau, and an ultimate destination back to England,
Printed Record, p. 14, 16. the Bermuda on the morning of Sunday the 27th April, 1862, was overhauled close under the land of Abaco. On being boarded, one of the hands, by direction of the master, and one of the passengers, burned or threw overboard some private letters and papers. The Bermuda was sent with a prize crew to Philadelphia.

Printed Record, p. 162. In the District Court for the Eastern District of Pennsylvania, a decree of condemnation of the vessel was made March 8, 1863, as follows:

"This vessel, if not absolutely of hostile ownership, was in the employment and under the direction of hostile persons, and so engaged in the trade of such persons, that she is confiscable as *enemies' property* according to the definition of this phrase under the law of maritime war, and in the language of prize courts. As to a portion of her cargo, I have still under consideration the question whether further proofs should be allowed.

I do not think that a judgment in the case of the vessel should be longer deferred. But her case, and that of her cargo, are so complicated with each other, that I defer my reasons in detail as to the vessel until a decision as to the cargo. A decree, in the general form, condemning the veseel, will be entered."

Decree.

"And now, fifth of March, 1863, this cause having been duly considered, and it appearing to the court that the said steamer was, at the time of capture, the property of enemies of the United States, or otherwise confiscable as prize of war, it is ordered, adjudged, and decreed, that the said steamer, her tackle, apparel, and appurtenances, be, and the same are condemned as good and lawful prize." Printed Record, p. 164.

The cargo of the Bermuda, with the exception of certain munitions of war, which, on the 10th of March, 1863, were as such, condemned, has never yet been adjudicated.

From these decrees of the District Court these appeals are taken.

In regard to the cases of the Appellants, who are Claimants of the portions of the cargo, which have been condemned, it is sufficient to remark, that, the fact that these portions consisted of military stores, is unimportant, because as will hereafter appear, they were not contraband unless destined for a port of the enemy. If not so destined, the fact of their being military stores does not alter their commercial character, nor render them more liable to seizure.

POINTS OF LAW ON THE PART OF THE APPELLANTS.

1.

If the Bermuda were on a voyage at the time of her capture from the port of Bermuda, a neutral port, to the port of Nassau, another neutral port, being then a British vessel and owned by a British subject, she was not liable to capture.

In order to render her so liable to capture, under these circumstances, she must have been actually on a voyage to Charleston, or some other blockaded port of the Southern States, with an intent to run the blockade.

2.

There can be no legal blockade by a belligerent of any other than a hostile port. There can be none of a neutral port. The Bermuda was, therefore, at perfect liberty to navigate to and fro among the British West India islands, so far as the question of blockade is concerned, unless she were actually on a voyage to a blockaded port of our country.

No blockade of a southern port could be lawfully extended so as to embrace the waters lying between or about the West India islands.

3.

There can be no proper legal assertion of a continued voyage of which Nassau was but an intermediate port, unless the evidence shows (which it does not) that the Bermuda was on her way to a blockaded port, via Nassau. Every voyage must have a *terminus a quo* and a *terminus ad quem*; the latter of which, under the evidence, was a port of discharge in the United Kingdom, and no part of the evidence shows that the Bermuda herself was to proceed as a part of her voyage to any blockaded port. It was no breach of the blockade of any such port to intend to land her cargo, either at Bermuda or Nassau, even

though some other vessel was afterwards to endeavor to carry on the cargo to Charleston, provided the Bermuda herself was to return to England.

4.

What the voyage of the Bermuda was, is a question of fact to be deduced from all the evidence in the cause. The shipping articles which described it with particularity, are persuasive evidence of the voyage on which the Bermuda started from Liverpool. The letter of instructions to the captain at that place, is in accordance with the shipping articles. The legal construction of those documents is, that the violation of a blockade was not embraced by them; and that if, after arriving at Bermuda, the ship should be ordered to a port of the United States, some open port, and not a blockaded port, must have been intended.

The instruction to the captain which he received at Bermuda to proceed to Nassua, exhausted the power which the verbal charterers of the ship had over her: and after leaving Nassau under the terms of the voyage, she could only be brought back to the United Kingdom.

5.

British merchants, as neutrals in our present war, had a perfect right to trade, even in military stores, between their own ports, and to sell at one of them, even to an enemy of the United States, goods of all sorts, although with a knowledge that the purchaser bought them with a view of employing them afterwards out of the neutral territory in war against us.

A neutral may sell in his own territory, to either belligerent, munitions of war; the only exception, so far as England and America are concerned, being a prohibition against fitting out vessels of war, or war-like expeditions in the neutral country against one of the belligerents.

6.

The question of contraband of war cannot arise with respect to any portion of the Bermuda's cargo, unless she were on a voyage to a blockaded port.

It is not necessary in law to show that it was part of the intention of the shippers of the cargo to land and sell it at Nassau. If it was intended to be stored there, and the voyage of the Bermuda to terminate at that place, except as regards her return to England, no question of contraband can arise in the cause.

7.

On a proper construction of the evidence, the control which John Frazer & Co., of Charleston, had over the voyage of the ship, did not clothe them with any ownership, even in a prize court. That control must be treated as confined to a direction of the ship within the limits of her prescribed voyage, and if that voyage did not include a trip to any blockaded port, or to any port of the enemies of the United States, it cannot affect injuriously the neutral owners.

8.

The power of attorney from Edwin Haigh, registered in the Liverpool Custom House, was not accompanied with an interest. Any sale under it must have been for the use of the principal, and all money received under it would have been the funds of the principal.

The power had no reference to the then voyage of the Bermuda It was an unexecuted one, and capable of revocation. If the Bermuda were not, on the voyage in question, destined to a Southern port, the execution of the power would either have been impracticable, or could only have been carried into effect through correspondents in some neutral territory.

9.

Spoliation of papers is cause of condemnation, and excludes further proof only as against the party committing it, if interested in the vessel or cargo. Against a party not committing the spoliation, and not authorizing it, nor interested in the act, it neither excludes further proof nor is it damnatory where other circumstances are clear.

10.

There is no proof in the cause that any spoliation of papers was authorized by Mr. Haigh, or conduced to his benefit as owner of the ship, nor is there any evidence of the spoliation of any papers which might properly be considered as proprietary documents.

11.

The capture of the Bermuda was unjustifiable, because, first, it was made within the range of modern cannon shot from British territory; second, it was made within a space embraced by a line drawn due South from the nearest headland on the island of Abaco, above the place of capture; third, because it was made, not on the open sea, but in waters constituting channels between islands belonging to Great Britain, a neutral power; and fourth, because it was made before actual search, and under a general authority to seize certain vessels wherever found.

12.

The claimant, Mr. Haigh, as the subject of a neutral power, has a right to rely in the present case upon the violation of the neutral rights of his own government, even although that government may have delayed or postponed the assertion of those rights. He may seek redress in our own prize courts, and if he fails to obtain it there, although entitled to it, his own govern-

ment may at a future day herself claim redress. Indeed, it is Mr. Haigh's duty in the first instance to seek redress from our prize courts.

13.

A subject of a foreign and neutral power, whose property is captured, has a perfect right, in the courts of the captor, to claim the restitution of his property on grounds of territorial immunity, without any intervention on the part of his government. He may claim the intervention of his government, which may withhold or afford it at its own discretion, without affecting the legal validity of the judicial claim.

The owner may on this ground avail himself of the immunity given by the place of capture within gun shot of Abaco, and within the narrow seas of the Providence channel.

Authorities on the foregoing Points, numbered 1, 2, 3, 4.

As to the voyage and the proof of it from the Shipping Articles.

The Ada, Davies' Reports, 407.

In the shipping articles of an English vessel, the voyage was described to be "from Liverpool to Savannah, and any port or ports of the United States, of the West Indies, or of British North America, the term of service not to exceed twelve months." It was held in that case that "the voyage intended was confined to the ports on the eastern shore of the continent, and that the articles did not authorize a voyage to San Francisco, on the northwest coast."

So, the Moss, Gilpin's Reports, 219.

In that case the Judge said:

"The voyage described in the article is 'from Philadelphia to South America, or any other port or ports, backwards and forwards, when and where required, and back to Philadelphia,

unless sooner discharged.' This is certainly a very awkward description of a voyage. South America is spoken of as a port to which they are to go, 'or' to any other port or ports, without any designation of them, whether in Europe or America; but they are to go backwards and forwards, when and where required. It will not do to tie down these contracts, made sometimes in a counting-house, and sometimes in the cabin of a ship, to the strict rules of composition. We must endeavor to come at the true meaning of the parties, and to give the contract a reasonable construction; to take care to put upon general words a just and reasonable limitation; but not lightly to destroy and avoid the whole contract, because the generality or breadth of the expressions may be in a degree uncertain, or might be used to impose an oppressive service."

Again, Flanders on Shipping, 49, 50.

"The result of the cases is that, when the *terminus a quo* and the *terminus ad quem* are fixed, but loose and indefinite expressions are employed as to the further course of the voyage, they will either be rejected for uncertainty, or construed as subordinate to the principal voyage stated in the preceding words."

"It should be observed that the master must avail himself of the ports described in the contract, in the order in which they stand, and cannot recur back, from the last, to any former port. Thus, shipping articles for a voyage from 'Philadelphia to Gibraltar, other ports in Europe or South America, and back to Philadelphia,' authorize a voyage directly from Gibraltar to South America, without proceeding to any intermediate European port, but not a return afterwards from thence to a European port."

As to the Law of Blockade,

Moseley on Contraband of War, p. 24.

"From the moment of quitting a port on a hostile destination, the offence is complete, and it is not necessary to wait till the goods are actually endeavoring to enter the enemy's port. (The Neptunus, 3 Rob. 108.) But where between the starting

of the vessel and her arrival at her destination, the colony to which she was going with a contraband cargo had changed hands and become British, she was held not in fault, for the vessel was not *in delicto*."

"And if the port of primary destination have been an innocent port, but the vessel be thence sent on to a port of naval equipment, she will be prize, if taken. (The Twende Brodre, 4 Rob. 38. See also 4 Rob. 93, and 5 Rob. 262.) Also held, that, if left to the captain to go to one of two ports, one of which is a forbidden one, and he be taken, on his course to the innocent one, he will not be liable to confiscation. But Sir William Scott decided (The Richmond, 5 Rob. 336,) that, if it be left to the opinion of the Captain to go to a forbidden port or not, and his going there is 'eventual' and 'possible,' all the legal consequences will follow if the forbidden port be his actual port of destination."

Deane on the Law of Blockade.

Introduction, p. 5.

"The next question is, to what places may a naval blockade be applied? Much ingenuity has been formerly shown, perhaps one might say wasted, in attempts to prove that ports of a certain description only could be thus blockaded; but it is now well settled that every place belonging to or in the occupation of the enemy, whether a fortified port or a port of naval equipment, or a purely mercantile and open port, or even a roadstead, may be blockaded. The only limits to the right of blockade, with reference to the nature of the place blockaded, are, first, that all the ports to which access is interdicted shall be enemy ports; and, secondly, that the extent of coast interdicted or the limits of the blockade, shall be within the power of the blockading force."

Same book, p. 26. Opinion in the case of the "Steen Bille." The Judge, Dr. Lushington, says:—

"I am satisfied, both on principle and authority, that the requisites to a blockade are only two,—first, that the ports to be

blockaded shall be hostile territory; secondly, that the blockading force could so act as efficiently to maintain it. Both these requisites existed in the present case; and therefore, I say, the blockade of Riga was legitimate."

See also Wheaton's International Law, pp. 568, 570.

The Jonge Pieter, 4 Robinson, 65.

"This was a case respecting the legal proprietary interest in certain articles purchased in England by Chr. Court & Co., and shipped by them for Embden, with directions that they should be sent on to Amsterdam. The goods were claimed as the property of J. Court, a merchant in America, and it was said that the transaction was conducted by Chr. Court & Co. in London, as agents for J. Court in America; that they had been in the habit of originating speculations of this sort, and of carrying the profit to the account of J. Court, to liquidate a debt due from him to the house in London.

In delivering judgment in the case, Sir William Scott said:—

"The whole case turns on the question of property. It is contended on the part of the captor that the property is either in the shipper or in the Dutch consignee. On the other side, it is insisted that the goods belong to J. Court, an American merchant, resident in America, for whom the claim is given. According as this point shall be determined, very different consequences will follow. If they could be shown to be the property of the enemy, they would be liable to confiscation on every ground, and without hesitation. But as that suggestion is principally founded on an expression in a letter, which is, I think, too equivocal to support such a conclusion, and as there are very strong circumstances in the farther proof to show that the property is not to be assigned to the Dutch consignee, that supposition may be dismissed out of the cause. Then it comes to this question—whether the property is to be taken as residing in the English shipper, or in the American merchant, for whom it is claimed. If they are the goods of the American merchant, the only question will be, whether Amsterdam being under blockade,

such a trade is not liable to the penal consequence of breaking the blockade. If they are the property of English subjects, the same question will arise, and also an additional question, whether, on their part, it is not such a circuitous trading with the enemy as will make the property on that ground liable to confiscation."

* * * * *

"In the case of a British subject shipping goods to go to the enemy, through a neutral country, I am afraid the penalty would be incurred. Without the license of government, no communication direct or indirect, can be carried on with the enemy.

On the policy of that law, this is not the place to observe. It is the law of England; and if any considerations of mercantile policy interfere with it, the duty of the subject is to submit his case to that authority of the country which can legalize such a trade, looking to all the considerations of political as well as commercial expediency that are connected with it. But an individual cannot do this; he is not to say, 'Such a trade is convenient, and therefore legal;' neither can the court exercise such a discretion. Where no rule of law exists, a sense or feeling of general expediency, which is in other words common sense, may fairly be applied. But where a rule of law interferes, these are considerations to which the court is not at liberty to advert. In all the cases that have occurred on this question, and they are many, it has been held indubitably clear that a subject cannot trade with the enemy, without the special license of government. The interposition of a prior port makes no difference; *all* trade with the enemy is illegal; and the circumstance that the goods are to go first to a neutral port will not make it lawful. The trade is still liable to the same abuse and to the same political danger, whatever that may be. I can have no hesitation in saying that, during a war with Holland, it is not competent to a British merchant to send goods to Embden, with a view of sending them forward on his own account to a Dutch port, consigned by him to persons there, as in the course of ordinary commerce."

The Stert, 4 Robinson, 53.

"This was a case of a cargo of butter and cheese, proceeded against on the ground of the blockade of Holland, and claimed for Prussian subjects. It appeared that letters of orders had been sent to the shippers in Edam, directing them to ship the present cargo in a small vessel by the *inland* navigation to Embden, consigned to Rudolff & Co., of that place, with orders to them to send it on to London."

Sir William Scott said:—

"This is a question arising out of the blockade of Amsterdam, respecting goods put on board in a port of the Texel, for the very purpose of being sent to London, without any interruption of the voyage, but conveyed out of Holland to Embden, by the means of the canal navigation, as I understand it. The question is, whether this is to be considered as a breach of the blockade. A blockade may be of different descriptions. The blockade of Amsterdam, which was imposed on the part of this country, was, from the nature of our situation, a mere maritime blockade, effected by force operating only at sea. As far as that force could be applied, it was indubitably a good and legal blockade; but as to an interior navigation, how is it a blockade at all?"

The Maria, 5 Robinson, 365.

This was a case of an American ship which had come from the Havana to New Providence, with a cargo of colonial produce, and was proceeding when taken, with a considerable part of that cargo on board, to the port of Amsterdam.

Sir William Scott, in that case, said:—

"This question arises as to a vessel which had gone to the Havana, and from thence to New Providence, where she was refitted and took on board part of the same cargo, with other goods belonging to the same owner, and some other articles on freight, and was at the time of capture proceeding to Amsterdam. On these facts, two questions have been made; first, whether the goods so going are not liable to condemnation; and, secondly, whether the ship as concerned in the same illegal transaction, is

not subject to the same penalty. It is certainly true that a continued voyage from the colony of the enemy to the mother-country, or to any other ports but those of the country to which the vessel belongs, will subject the cargo to confiscation; and the only point which the court has to decide is, whether the voyage in question is to be considered as a continued voyage or not. It is a question in its nature subject to very considerable difficulties in particular cases, and one on which the Court must exercise its judgment with great caution on the special circumstances which compose the substance of each case, and with great care not to attribute more weight to any particular fact than what it justly demands. In the case of the *Essex*, *Orne*, which was decided by the Court of Appeal, the principle of law by which such cases are to be decided was distinctly affirmed. It certainly is not a novel principle; and I cannot but express my surprise that it should be represented in any place, as I understand it has been, that the principle is new. On the contrary, it is an inherent and settled principle in all cases in which the same question can have come under discussion, that the mere *touching* at any port, without importing the cargo into the common stock of the country, will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering her cargo at the ultimate port. The *Essex*, *Orne*, was in fact the first case which called for the direct decision of the Superior Court; but the same doctrine would have been held in any case if such case had occurred at an earlier period; and cases had occurred before very sufficient to convey a full admonition upon the subject.

"As the *Essex*, however, happened to be the leading case on this subject, it may not be improper that I should state what I conceive to be the substance of it. It was the case of an American vessel which had gone from America to Lisbon, where, finding the market bad, she went on to Barcelona, and there took on board a cargo of Spanish produce for the Havana, under the direction of the agent in Europe, 'that she should go to the

Havana, first touching at Salem, in America, where the owner resided, who adopted the plan and sent the vessel on.' It appeared clearly to the Court that it was the intention, originating in the mind of an authorized agent, acting under full powers, that the vessel should go to the Havana, and that this purpose was adopted by the owner; that it was in reality a continued voyage from Spain to the Havana; that as to the intention, all doubt was done away by the adoption on the part of the owner, who had the vessel in his own port, and was fully implicated in the engagement of sending her on, according to the projected voyage.

"That was the fundamental case—a case of a trade from the mother-country to the colony, with full knowledge of the circumstances, and a distinct adoption of the purpose on the part of the owner. Other cases have occurred since in this Court, which have been determined on their own particular circumstances; as, indeed, all cases of this kind must be entertained on their own evidence, which may be slighter or stronger, according to the manner in which the transaction has been conducted."

The Thomyris, Edwards' Admiralty Reports, p. 17.

"The question which arose in this case was respecting a quantity of barilla, which had been brought to Lisbon in an American vessel from Alicant in Spain, and was there put on board this ship for the purpose of being carried on to Cherbourg. It was contended on the part of the captors that this was a mere transhipment of the barilla from one vessel to another at an intermediate port, which, under the authority of former decisions, was not sufficient to break the continuity of the voyage, and that it must be considered as one entire voyage from Alicant to Cherbourg, and consequently that the barilla was subject to condemnation under the Order in Council prohibiting the trade from one enemy's port to another."

"On the part of the claimants, it was urged that there was not merely a transhipment, but an actual sale of the barilla at Lisbon."

Sir William Scott says:—

"In all cases of this description it is a clear and settled principle that the mere transhipment of a cargo at an intermediate port will not break the continuity of the voyage, which can only be effected by a previous actual importation into the common stock of the country where the transhipment takes place. It therefore became absolutely necessary that the Court should require further evidence upon the subjebt, because if there was nothing more than a transhipment of the cargo from one vessel to another, that will not alter the transaction in any respect, and it must still be considered as the same continuous voyage to the port where the cargo was ultimately to be delivered. It is, however, contended, that there was not simply a transhipment of this cargo, but likewise an actual sale of it upon its arrival in the Tagus, and that therefore the question arises whether the additional fact of a sale being made of the cargo at the port of transhipment will, under all the circumstances attending such sale, give it the character of a new voyage, or whether the two parts are so linked together that it must still be considered as one entire voyage from Alicant to Cherbourg." * * *

It has never been decided that, where goods are brought to an intermediate port, not *animo importandi*, but sold whilst waterborne and then transhipped, such sale with transhipment makes a new exportation from the port in which it is transacted. In order to constitute an exportation, there must have been a previous importation in the case of commodities not native. Where a cargo is sold to be immediately transhipped and exported, that can never be considered as any importation at all. It is all one act, of which the sale and the transhipment are only stages; they lengthen the chain but do not alter its direction. Now, in this case, the evidence of importation (and indeed that of sale,) is very imperfectly sustained. There is no clearance, no custom-house certificate, to show that the duties have been paid. The whole is made to rest on the affidavits of the three persons immediately interested in the transaction, the buyer, the seller and the broker." * * * * * * * * *

"There is in fact neither import nor export, but the State raises upon the commodity a transit duty without either the one or the other. There is no breach of the continuity of the voyage. If permitted, it is clear that there would be no means of preventing an universal evasion of that order which prohibits the trade between the ports of the enemy."

The Betsey, 1 Robinson, 92.

"To constitute a violation of the blockade," says Sir William Scott, "three things must be proved: first, the existence of an actual blockade; second, the knowledge of the party supposed to have offended; and, third, some act of violation, either by going in or coming out with a cargo laden after the commencement of blockade."

See Wheaton, 577, &c.

Authorities on Points numbered 5 *and* 6.

In addition to those already cited, which, in part apply, the following are presented:—

Moseley on Contraband of War, 41.

"Arms and Ammunition, or all things solely and directly applicable in war, *on the road to an enemy*, are contraband."

"It matters not from what country or port or to what port they are going, so long as the latter be an enemy's. They are things so essentially contraband as to be entirely without the privileges and conditions adverted to in the third and fourth chapters of the work. * * * * * * *

"And this as all other rules against contraband must contain the condition of their being on the road to an enemy, because *arms even may be sold by a neutral in his own territory to an enemy, even though known to be destined for the purpose of war against his friend.* And all attempts to restrain this, which have often been made, have always failed and been contrary to the law of nations."

Pratt on Contraband, p. 19.

"The object of the laws against contraband being to prevent the communication of assistance to an enemy, it is absolutely necessary to constitute that offence, that the destination of the goods should be to a hostile port."

"Goods going to a neutral port cannot fall under that denomination, the conveyance of any goods to such a destination being lawful."

The same writer on page 18, speaks thus: *Passive* contraband, to wit: traffic conducted on the part of neutrals within their own territories, the conveyance of the goods to their destination being left to the enemy himself; held lawful by most publicists.

Hautefeuille—Des Droits et des Devoirs des Nations neutres en tems de Guerre Maritime. Tome 3, pp. 222, 223.

"La réunion de deux circonstances est indispensable pour soumettre un navire neutre à la saisie pour le fait de contrebande. Il faut: 1° qu' il se trouve actuellement à bord des objets de contrebande en quantté plus que suffisante pour les besoins du navire et de son équipage; 2° et que le navire soit destiné pour un port de la puissance belligérante ennemie du croiseur qui exerce la visite. Cette dernière circonstance est indispensable pour qu'il existe une violation des devoirs de la neutralité, une atteinte aux droits du belligérant Le devoir du neutre, en effet, consiste, non à s'abstenir de faire le commerce des objets réputés contrebande, d' une manière absolue et avec toutes les nations, mais seulement à s'abstenir de fournir ces objets à l'un des deux combattants; il consiste à ne pas s'immiscer aux hostilités, en portant chez l'une des nations en guerre des denrées propres à alimenter la guerre, á la rendre plus active et plus dangereuse pour l'une d'elles. Or, quelle que soit l'espèce de commerce que fasse un neutre avec un autre neutre, il ne viole pas ce devoir. Entre deux puples pacifiques il n'y a pas, il ne peut pas y avoir de prohibé de guerre. Chacum des peuples étrangers aux hostilités a droit, vis-à-vis des

neutres, à une liberté commerciale aussi compléte, aussi absolue que pendante une paix générale, et la devoir du belligérant est de respecter cette liberté."

"L'autre condition pour qu'il y ait lieu à saisie est que la contrebande se trouve actuellement à bord du navire neutre destiné pour un port ennemi. Il ne suffit pas que le navire ait commis cette violation de ses devoirs ; il est nécessaire qu'il soit surpris en flagrant délit."

The Imina, 3 Robinson, 167.

Sir William Scott says :

"This is a claim for a ship taken, as it is admitted, at the time of capture sailing for Embden, a neutral port—a destination on which, if it is considered as the real destination, no question of contraband could arise, inasmuch as goods going to a neutral port cannot come under the description of contraband, all goods going there being equally lawful. It is contended, however, that they are of such a nature as to become contraband, if taken on a destination to a hostile port. On this point some difference of opinion seems to have been entertained ; and the papers which are brought in may be said to leave this important fact in some doubt. Taking it, however, that they are of such a nature as to be liable to be considered as contraband on a hostile destination, I cannot fix that character on them in the present voyage. The rule respecting contraband, as I have always understood it, is that the articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy's port."

"Under the present understanding of the law of nations, you cannot generally take the proceeds in the return voyage. From the moment of quitting port on a hostile destination, indeed, the offence is complete, and it is not necessary to wait till the goods are actually endeavoring to enter the enemy's port ; but beyond that, if the goods are not taken *in delicto* and in the actual prosecution of such a voyage, the penalty is not now generally held to attach."

He then asks, "was this property taken under such circumstances as make it subject to the penalty of contraband? Was it taken *in delicto*, in the prosecution of an intention of landing it at a hostile port? Clearly not. But it is said that in the understanding and intention of the owner, it *was* going to a hostile port, and that the intention on his part was complete from the moment when the ship sailed on that destination. Had it been taken at any period previous to the actual variation, there can be no question but that this intention would have been sufficient to subject the property to confiscation; but when the variation had actually taken place, however arising, the fact no longer existed."

The Hendrick and Alida, 1 Hay and Marriott, 96.

It was the case of a Dutch ship captured during our Revolutionary war, laden with powder and arms, with foreign officers, going to the provincial army. Sir George Hay restored the cargo, and although in the argument it was put to him as a fact, and it seems not to have been doubted, that it was notorious that arms and ammunition were sent in large quantities to St. Eustatia, for exportation to the American colonies—that that place had become a magazine of arms for enabling the colonies to support their war of independence. It was, therefore, as strong a case as could have been put to an English Court; and the Judge, in delivering his opinion, by which he ordered the ship and cargo to be restored, said that it would be too much for any such Court of justice as that in which he presided, to assert, that the Dutch might not carry in their own ships to their own colonies and settlements, everything they pleased, whether arms or munitions of war, or any other species of merchandize; and he said "that the gunpowder could not be proved to be going directly for the use of the rebels;" but he added, that the vessel herself being armed, (which was not our case), and having also on board officers going to the provincial army, was a strong circumstance against allowing the claimant's costs, and therefore he threw the costs upon the vessel.

Contraband articles being on board do not affect the ship, when not belonging to the owner of the ship, unless there be circumstances of fraud in the voyage, such as a false destination or false papers. Wheaton's International Law, 568.

The Jacob, 1 Robinson, 90–1.

This was the case of a ship under Swedish colors, laden with iron, hemp, tobacco, and other articles, taken on a voyage from Riga to Amsterdam. The ship was claimed as Swedish property, the iron being for Russian merchants. Sir William Scott, after declaring that hemp was contraband, goes on to say:

"The hemp must certainly be condemned; but I do not know that under the present practice of the law of nations, a contraband cargo can affect the ship. By the ancient law of Europe, such a consequence would have ensued; nor can it be said that such a penalty was unjust, or not supported by the general analogies of the law, for the owner of the ship has engaged it in an unlawful commerce. But in the modern practice of Courts of Admiralty of this country, and I believe of other nations also, a milder rule has been adopted, and the carrying of contraband articles is attended only with loss of freight and expenses, except where the ship belongs to the owner of the contraband cargo, or where the simple misconduct of carrying a contraband cargo has been connected with other malignant and aggravating circumstances."

On page 288 of the same book, in a note to the case of the Mercurius, will be found what follows:

"Formerly by the law of nations, the carrying of contraband articles of war worked a forfeiture of the ship. Declaration of England and Holland against Spain, 17th Sept., 1625, art. 20; and treaty between England and France, Nov. 3, 1653, art. 15. In modern practice, except where the contraband articles belong to the owner of the vessel, or where the case is attended with particular circumstances of aggravation, the penalty has been mitigated to a forfeiture of freight and expenses."

The writer then cites Bynkershoek and Heineccius, both of whom lay down the ancient rule to the contrary.

The Tobias, 1 Robinson, 329. The ship was taken on a voyage from Bremen to Rochelle, laden with tar.

Sir William Scott, after pronouncing the tar contraband, says:—

"Formerly, according to the old practice, this cargo would have carried with it the condemnation of the ship; but in later times this practice has been relaxed, and an alteration has been introduced which allows the ship to go free, but subject to the forfeiture of freight on the part of the neutral owner. This applies only to cases where the owners of the ship and cargo are different persons. Where the owner of the cargo has any interest in the ship, the whole of his property embarked in that transaction is liable to confiscation."

The Franklin, 3 Robinson, 217.

It was a Prussian ship going with a cargo of hemp and iron from Lubec, ostensibly to Lisbon. There was a charter-party which provided for her going from Lubec to Lisbon; but the court inferred from circumstances, that she was actually proceeding to Bilboa in Spain. This fact was inferred from the place of capture and the course of the voyage. The direction of a ship's course on the high seas is *prima facie* evidence of the place to which she is going, if that particular position is not shown to have arisen, *ex necessitate*, by force of circumstances, such as stress of weather, going in search of provisions, or the like. Where a ship, not driven by necessity out of her course, goes out of the regular track, she is presumed to do so, for some purpose other than a correct one. That is the presumption, because deviation on the part of the navigator is unlawful; the ship is bound to go in the nsual direct course from the place of departure to the place of destination, and if she be found out of that course, it is a suspicious circumstance—one which throws upon the navigator the burden of explanation. Sir William Scott, in the case said:—

"This is the case of a ship claimed as the property of Prusstan subjects, and sufficiently proved to belong to them. The

charter-party, made with persons at Hamburgh, engages her to go from Lubec to Lisbon. If that was the real destination, there could be no doubt that the owner would be entitled to a restitution. But a question has arisen on that fact, from the nature of her cargo and the place in which she was taken. Her cargo consists of several articles directly contraband, if going to the enemy, and not protected by the favorable considerations which are to a certain degree, and in some known instances, applied to the goods of persons exporting the native commodities of their country. The other articles, though not so distinctly contraband, are such as are of great use in naval equipment, and might subject the ship to some penal inconvenience, if going to a hostile port."

"The destination, therefore, is the principal fact in this case. The ship was taken out of her proper course, and in a direct course toward one of the Spanish ports in the Bay of Biscay, on this side of Cape Finisterre. I have had frequent occasion to observe that it is very difficult to detect a fraud of this species in the particular instances. Pretences and excuses are always resorted to, the fallacy of which can seldom be completely exposed; and therefore, without undertaking the task of exposing them in the particular case, the Court has been induced (and I hope not unwarrantably,) to hold generally in each case that the certain fact shall prevail over the dubious explanations."

The Neutraliet, 3 Robinson, 295.

"The modern rule of the law of nations is certainly that the ship shall not be subject to condemnation for carrying contraband articles."

"The ancient practice was otherwise: and it cannot be denied that it was perfectly defensible on every principle of justice. * * * The policy of modern times has, however, introduced a relaxation on this point; and the general rule now is that the vessel does not become confiscable for that act." He adds that the rule is liable to exceptions where there are circumstances of aggravatoin, such as a false destination or false papers.

Hobbs v. *Henning*. January, 1865. Law Journal Reports. Vol. 34, Part 4, p. 117. There is no breach of neutrality if the voyage were to a neutral port. The character of cargo does not affect ship unless owned by owner of ship. This case was decided since the former argument. We quote the language of the Court.

Erle, C. J., said:—

"If goods are in the course of transport from a neutral port to a neutral port, the better opinion seems to be that war does not give to a belligerent any right to seize them on account of their quality." Again: "If goods fit for immediate use in war, and therefore of the quality denoted by the terms 'contraband of war," are passing between neutrals, it seems they are not liable to seizure by a belligerent. The right of capture attaches only when they are passing on the high seas to an enemy's port; they must be taken *in delicto*, that is in the actual prosecution of a voyage to an enemy's port. The liability therefore of goods to lawful seizure, although their quality was such as might make them 'contraband of war,' depended on their destination, and they were not liable unless it *distinctly* appeared that the voyage was to an enemy's port."

Points 7 *and* 8 *are questions of fact.*

Authorities on Points numbered 9 *and* 10.

An invoice is not, properly, a proprietary document. Its definition shows this.

Andrews on the Revenue Laws, 334.

"An invoice is a writing made on behalf of the importer, specifying the merchandise imported, and its true cost or value. It is an entirely different document from the bill of lading, as the latter is a memorandum of a contract for freight. The law requires a true invoice of imported merchandise to be presented to the collector before entry is made."

So, as to a manifest,

On page 322, in speaking of manifests, he describes a mani-

fest to be "a writing exhibiting a true and perfect description of the cargo, for the production of which the master of the vessel is responsible."

The manifest and Bills of Lading were found on board the Bermuda, but no Invoices.

Then, as to the Law of Spoliation.

The Rising Sun, 2 Robinson, 104.

The *Rising Sun*, was the case of an American vessel taken June 10th, 1796, on a voyage from a French port, ostensibly to Altona, but in reality bound to Guernsey. The ship had been restored on the 24th of June, reserving the question of freight, demurrage and expenses. The cause came on upon the property of the cargo, in which a question arose respecting the effect of a spoliation of papers.

Sir Wm. Scott, after stating the case, says:—

"The master says to the 16th [interrogatory] 'that there were eight or nine letters under the care of Seaman, but that he took them from him on the appearance of the chasing vessel, which he supposed to be a French vessel, as it came from the French coast:' from which I am led to suppose that they were letters which he had confided to Seaman, but took them from him on the apprehension of being chased by a French cruiser. But Seaman does not give a very ingenuous account of this matter: he says, 'that he took the letters in port,' not saying from whom he received them; therefore I must infer that he received them from the master. There is no reason given for destroying them; and it has been justly observed, that if this is American property and the letters applied to that, they would have been preserved as the best evidence to protect the cargo as American property; but that if the property belonged to merchants at Guernsey or to British merchants, there might then be good reason for such suppression. It has been said in explanation that they might be destroyed, that no contradiction might

arise to the ostensible destination; but it is well known that, although it is the ordinary form of clearing out from a belligerent country to bear an ostensible destination to a neutral port, yet no one imputes that as a fraud, nor is it considered as such an act as would justly subject neutral property on board neutral ships to be molested on that account. Here then is a spoliation unaccounted for and unexplained, traced home to the master of the vessel, who is also the asserted owner of a great part of the cargo. Spoliation is not, alone, in our courts of admiralty a cause of condemnation; but if other circumstances occur to raise suspicion, it is not too much to say of a spoliation of papers that the person guilty of that act shall not have the aid of the Court, or be permitted to give further proof, if further proof is necessary.

* * * * *

"With respect to the property of the owners, it would be going too far to say that they are precluded from further proof. It appears that they are persons of property; the master was to receive the profits of some former freights in France; and it appears also that he had made several freights for them, and that he was to have credit in London, with which he was to purchase wines at Bordeaux. All these circumstances give a fair foundation to this part of the case. It would, I think, be too hard to hold them concluded by this man's misconduct. The evidence of their property is not at present sufficient, but it may be restored on further proof, and I shall direct further proof to be made of their property."

The Hunter, 1 Dodson, 480.

Sir Wm. Scott, on page 486, says:

"It is certain that by the law of every maritime court of Europe, spoliation of papers not only excludes further proof, but does *per se* infer condemnation, founding a presumption *juris et de jure*, that it was done for the purpose of fraudulently suppressing evidence which, if produced, would lead to the same

result: and this surely not without reason, although the lenity of our code has not adopted the rule in its full vigor, but has modified it to this extent, that, if all other circumstances are clear, this circumstance alone shall not be damnatory, particularly if the act was done by a person who has interests of his own that might be benefited by the commission of this injurious act."

The Pizarro, 2 Wheaton, 227.

Mr. Justice Story, who delivered the opinion of the Court, says:

"The concealment, or even the spoliation of papers, is not of itself sufficient ground for condemnation in a prize court. It is undoubtedly a very serious awakening circumstance, calculated to excite the vigilance and justify the suspicions of the Court; but it is a circumstance open to explanation, for it may have arisen from accident, necessity, or superior force; and if the party in the first instance fairly and frankly explains it to the satisfaction of the Court, it deprives him of no right to which he is otherwise entitled. If, however, the spoliation be unexplained, or the explanation appear weak or futile—if the cause labor under heavy suspicions, or there be a vehement presumption of bad faith or gross prevarication, is is made the ground of a denial of further proof, and condemnation ensues, from defects in the evidence which the party is not permitted to supply."

Authorities on the 11*th*, 12*th and* 13*th points—the immunity from capture, as within the territorial jurisdiction of Great Britain, and by virtue of a general authority.*

Azuni, Chap. 2, *Part* I.—The most certain mode of fixing the extent of territorial sea adjacent to coasts not curved, is to limit it to the space passed over by a ball, shot from a cannon, or at the point at which a bomb thrown from a mortar placed

on the shore, *may* strike a vessel. This opinion appears conformable to the principles of universal law, by which all that space is considered as territory over which officers and magistrates can cause the orders of their government to be executed either by fear or by the force confided to them. It would be reasonable, then, in my opinion, without inquiring whether the nation in possession of the territory has a castle or battery erected in the open sea, to determine definitely that the jurisdiction of the territorial sea shall extend no farther than three miles from the land, *which is* (1796) *without dispute the greatest distance to which the force of gunpowder can carry a ball or bomb.* Sect. 15.

Azuni, § 17, 19, states the limitation on a curved coast, such as Abaco and the Bahama cluster generally, to be a line from one headland to another, *or if islands intervene, then along the islands beyond the marine league*, and the further principle, when it is a question of territorial sea, for the purpose of imposts or freedom of passage, or revenue visitation, the extent of sovereignty should be contracted, but if for the purpose of asylum against hostilities or immunity from capture, "it should be regarded as a beneficial right, to which the greatest extension should be given." He expresses the hope that the limit may be extended to the limit of vision. The Bermuda was captured far within the range of the Abaco light.

The other continental authorities are Grotius, Lib. 2, cap. 3, § 13, 2. Barbeyrac, Tom. I, p. 300. Bynkershoek, by Duponceau, p. 59. The translator saying, "I have shown the rule as far as sight can extend, to be too vague, being of opinion that the dominion of land ends where the power of arms terminates," the strict terms being within reach of the cannon of batteries and forts, as Azuni states it, not actual forts, but the possible range of guns. Vatel defines the limit as within reach of cannon along the coast. "A vessel taken within that range, is not good prize." Hautefeuille, as cited in Lawrence's Wheaton, 103: Garden Traitè de Diplomatie, vol. I, p. 398, defines the limit to be "à la plus forte porteé d'un canon placé sur les

côtes." The passage from *Hautefeuille*, Tome I, p. 90, is as follows:

"Or, le point où cessent les trois causes que rendent la mer susceptible de possession privée est le même: c'est la limite de la puissance, qui est représentée par les machines de guerre. Tout l'espace parcouru par les projétiles lancés du rivage, protégé et défendu par la puissance de ces machines, est territorial, et soumis au domaine du maitre de la côte. La plus grande portée du canon monté a terre est donc réelement la limite de la mer territoriale."

Ortolan, vol. I, p. 166; D'Abreu, p. 114. Emerigon, p. 359, adopts the rule of possible cannon range, and says capture within less than two leagues of neutral coast, is against the law of nations. De Cussez Phases du Droit Maritime, vol I, p. 92, Leipsic Ed. "An enemy's ship cannot be captured in that part of the sea over which extends the jurisdiction of a neutral, a friendly or a non-belligerant ally, and general usage measures this by cannon range." This was in 1856. Martens Precis du Droit des Gens., p. 385. Hefter, translated by Bergsen, § 65, p. 155, speaks of the cannon range as not fixing an invariable basis. La Novissima Recopilacion, Lib. 6, tit. 8, Ley 4, defines the Spanish limits, within which prizes are not legitimate as beyond the then known reach of cannon, or two miles (two Spanish miles being double three English miles.) Jacobson, 1818, p. 415. De Rayneval Droit de la Nature et des Gens., p. 162. Many authors adopt the cannon range, but the most just rule would be the range of vision, or the actual horizon. De Pistoye, p. 93, Paris, 1855, commenting on an ordinance of the Hawäiian government fixing the marine league as the absolute limit, says, "En cette circonstance la gouvernement Hawäiian n'apas procedé avec une parfaite régularité; il aurait du se borner à parler de la porteë du canon, c'est que le Roi n'est peutetre pas bien au fait du droit public Européen." This is a standard authority. Cauchy, the last French writer on the subject, says that the rule ought to be determined absolutely by compact, for being now the range of cannon shot, *it is modified by improvements in*

artillery. This is a most important citation. Cauchy Droit Maritime International, vol. I, p. 40, 41—Paris, 1862. In another place, vol. II., pp. 151, 152, Cauchy says, "improvements in artillery enable sovereigns by the erection of coast batteries, effectively to annex to their territorial dominion, the maritime zone controlled by their fire.

As an additional continental authority, Le Nord, 18 June, 1861, commenting on the instructions given to the confederate letters of marque, which adopt the marine league, says that the true rule is the cannon range, and being so, has been singularly and properly extended by modern improvements in artillery. The rule evolved from these continental authorities is the same as stated by Mr. Lawrence, note 103, Wheaton, that territorial jurisdiction is dependent upon the extent to which a cannon shot may go, and that consequently when there is no treaty defining the line, it varies with the improvement in artillery; a rule quite consistent with Lord Stowell's ruling in the Anna, 5 Rob., 385, and Polson's Law of Nations, p. 29, cited in Halleck's International Law, p. 130. Polson's language is: "The usage of nations has for obvious reasons extended their possessions to as much of the open sea as lies within cannon range; *that is*, about three miles. Chancellor Kent, vol. I., p. 141, says: It is the *usus belli* which determines articles to be contraband, and as articles come into use as implements of war which before were innocent, there is truth in the remark that, as the sinews of war vary and shift from time to time, the law of nations shifts with them; not indeed by the change of principles, but by a change in the application of them to new cases, and in order to meet the varying exigencies of war."

The treaty provisions on the subject adopt the rule, not of a marine league or any precise limit, but the cannon range. Treaty 1786, between France and England; 1787, France and Russia; 1787, the two Sicilies and Russia; 1795, France and the Barbary Powers; 1601, Russia and Sweden.

Jay's Treaty of 1794, Art. 25.

Treaties with the Barbary States, Spain and Prussia. Statutes at Large, vol. VIII. pp. 128, 142, 164, 158, 215, 245, 102.

It may be noted as a matter of history, and as illustrative of public law, that in the treaty negotiated by Mr. Monroe and Mr. Pinckney, in 1806, and rejected on the impressment scruple by Mr. Jefferson, the territortal limit was extended to five miles. (Martens' Recueil des Traités, vol. VIII, pp. 586, 590. Hildreth's U. S., vol. 2, second series, p. 657.)

It should further be noted that in the conflict between the Kearsage and Alabama, referred to at p. 69 of the Attorney General's brief, according to Mr. Dayton's letter to Mr. Seward, of 20th January, 1864, (Correspondence of 1864, part 3, p. 107,) it took place far beyond the marine league. "The Alabama," says Mr. Dayton, "sunk *five* miles from the shore"—and was then steaming toward the land. The log of the Deerhound (Id., part 2, p. 177) says the action began at nine miles from the French coast.

On the question of immunity from capture, under a general authority to Naval officers, to seize certain vessels 'nominatim,' without reference to their position, or destination, or cargo, as properly ascertainable, the attention of the Court is called to an official correspondence in which the views of the Executive Department of the Government are clearly stated.

On August 1st, 1862, Commander Hewett, of H. B. M's. ship Rinaldo reported as follows to Vice-Admiral Milne:—

"In forwarding to you a copy of the log of the British Steamer Adela, I feel it my duty to report the following conversation that took place on board the San Jacinto, with Flag Officer Lardner, when at Key West, relative to the seizure of the 'Adela,' and her position during the time being in British waters, and the unusual manner in which she was brought to. The Flag Officer remarked, as regards the position of the vessel when brought to, reports differ, but that the United States vessels of war had orders to seize any British vessels whose names were forwarded to them from the government at Washington, and that being bound from one British port to another would

not prevent United States officers from carrying out those orders. The Flag-officer considered that their proceedings might bring on a collision, but that such were the definite orders, that they were, when and where met with, to seize British steamers or vessels, of which official information was sent them."

On August 2, 1862, Admiral Milne wrote to Mr. Stuart, Chargè d' Affairs, at Washington :—

"I lose no time in forwarding to you the documents which I yesterday received from Commander Hewett, of H. M. steamer Rinaldo, giving details of the capture of the British steamer Adela by the U. S. cruizer Quaker City, and reporting the purport of communications, which having, in consequence, passed between himself and Flag-officer Lardner, commanding the U. S. Squadron at Key West. It would appear that the Adela was bound from Liverpool and Bermuda to Nassau, for which place she had mails, that she was fallen in with near the British Island of Abaco, by the U. S. cruizer Quaker City, which, without showing any colors, chased and fired at her several times. It is further stated that she was seized before the result of any actual search could have proved that contraband of war was on board, and thus given a colorable pretext for the seizure, on the ground that her real destination was not Nassau, but some Southern port. Grave as this transaction in the aspect in which it is presented to me, of far graver immediate consequence is the statement of the flag officer (if rightly understood by Commander Hewett) that their cruisers have orders to seize any British vessels whose names were forwarded them from the Government at Washington, and that being bound from one British port to another would not prevent the U. S. officers from carrying out those orders; and further, that such were the definite orders, that they were when and where met with, to seize British steamers or vessels of which official information had been sent them.

On or before the 8th of August, 1862, Mr. Stuart submitted the matter for the consideration of the Secretary of State. Immediately on the receipt of these papers, Mr. Seward addressed a letter to the Secretary of the Navy, in which he said :

"It is the duty of the naval officers to be vigilant in the searching and seizing vessels of whatever nation, which are carrying contraband of war to the insurgents of the United States. But it is equally important that the provisions of the maritime law in all cases be observed and respected. Without waiting to inquire into the correctness of the representations of Admiral Milne, thus brought to my notice and with a view to prevent collisions between the armed vessels of the United States and Great Britain, I am directed by the President to ask you to give the following instructions explicitly to the naval officers of the United States. * * * * * * * Thirdly, that if it shall appear that a vessel is actually bound and passing from one friendly or so called neutral port to another, and not bound for or proceeding to or from a port in the possession of the insurgents, then she cannot be lawfully seized. * * The President desires especially that naval officers be informed that the fact that a suspected vessel had been indicated to them as cruizing in any limit which has been prescribed to them by the Navy Department, does not in any way authorize them to depart from the practice of the rules of visitation, search and capture prescribed by the law of nations."

Mr. Stuart, in communicating this on August 12th, 1862, said:

"When I went to Mr. Seward to ascertain what course the United States government proposed to pursue in the case of the Adela, he read to me an instruction which he was addressing, in the name of the President, to the Secretary of the Navy, laying down rules for the future guidance of United States naval officers, which essentially modify the instructions under which they have latterly been supposed to be authorized to seize certain ships, of which a list was furnished to them, when or where those ships were met with, irrespective of the observance of international law.

"Mr. Seward agreed to send me a copy of the present instruction, and I now have the honor to enclose it. It appears to me

to evince a proper respect for the rights of neutrals, and to be calculated to check the illegal capture of British ships, having a neutral destination, and not actually caught *in delicto*, in the prosecution of a voyage to an enemy's port. It is, indeed, therein admitted that such seizures are illegal."

In this view the British government, in despatches from the Foreign Office, dated 27th of August and 10th of October, acquiesced.*

On May 7th, 1863, (Diplomatic Correspondence, Part I, p. 590,) in discussing another subject, Mr. Seward wrote to Lord Lyons: "The President, being sincerely desirous to avoid the exercise of any questionable belligerent rights against Great Britain, or any other maritime power, has thought proper to direct that the attention of officers of the navy shall be distinctly called to the instructions which were mentioned in my note of 8th August last, and that they be expressly enjoined to rigidly observe and conform to the same."

The evidence is conclusive that the Bermuda was captured on her way from Liverpool and Bermuda to Nassau, under precisely such a general authority, her name being on a list furnished by the Navy Department.

G. M. WHARTON,
W. B. REED,
For Complainants.

* The Adela was condemned at Key West in 1863, but in view of the importance of the principle involved, the appeal was allowed without the usual bond.—*Dip. Correspondence*, 1863, *Part I*, *p.* 626.

ADDENDUM.

Secretary Welles wrote to Mr. Seward on the 5th of March, 1864, (Dip. Corres. 1864, Part 2, p. 549,) "I do not understand our government to claim the right to capture neutral ships on a *bona fide* voyage from one neutral port to another, though laden with articles which would be contraband if carried to an enemy's port."

Mr. Seward, in September, 1864, (Dip. Corres. 1864, part 2, p. 709,) wrote to the British Chargé d' Affairs, that at the time of the fight of the Kearsage and Alabama, the French government remonstrated with both parties against firing within the *actual* reach of cannon balls. It was established that a Parrot Gun which was discharged, had a range of five miles.

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In the Supreme Court of the United States.

DECEMBER TERM, 1865.

In Prize.

EDWIN HAIGH, claimant of steamship Bermuda, appellant, *vs.* THE UNITED STATES.	No. 64.
ALEXANDER T. BLAKELY, claimant of part of cargo of the steamship Bermuda, appellant, *vs.* THE UNITED STATES.	No. 65.
FRASER, TRENHOLM & Co., claimants of part of cargo of the steamship Bermuda, appellants, *vs.* THE UNITED STATES.	No. 66.

APPEALS FROM THE DECREES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
TITIAN J. COFFEY,
Special Counsel for United States.

In the Supreme Court of the United States.

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APPEALS FROM THE DECREES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

The steamship Bermuda, C. W. Westendorff, master, was captured as prize of war by the United States ship-of-war Mercedita, H. S. Stellwagen, esq., commander, on the high seas, off the southeast coast of Great Abaco island, one of the Bahama group, on the 27th of April, 1862. She was sent to the port of Philadelphia, and ship and cargo were libelled in prize by the United States attorney at that port on the 9th of May, 1862.

On the 20th of May, 1862, Captain Westendorff, the master of the Bermuda, in the name and on behalf of Edwin Haigh, a subject of the Queen of Great Britain, and resident of Liver-

pool, England, made claim to the vessel, alleging that Haigh was the sole owner thereof; and also, on behalf of the several owners of the cargo on board, made claim thereto, alleging that the said owners were unknown to him, but that he believed them to be British subjects. (Record, pp. 6, 7.)

At a subsequent stage of the proceedings, on the 22d August, 1862, Henry Wise, alleging himself to be, by birth and residence, a subject of Great Britain, and to be deputed by Edwin Haigh, petitioned on behalf of Haigh to ratify and confirm the claim theretofore made for him by Westendorff, which prayer was allowed to be filed. (Record, pp. 116, 117.)

On the 6th of September, 1862, the proctor of claimants, on behalf of A. T. Blakely, a British subject, residing in London, England, submitted the affidavit of said Blakely, and prayed leave to adopt the claim made by Westendorff, so far as respected the portion of the cargo shipped by him at Liverpool, and asked restoration thereof, consisting of a quantity of guns and ammunition particularly specified. (Record, pp. 134, 136.)

On the 5th of March, 1863, the court decreed condemnation of the steamer, on the ground that at the time of capture she was the property of *enemies of the United States*, or otherwise confiscable as prize of war, from which decree the proctor of Edwin Haigh, on his behalf, appealed to this court. (Record, pp. 162, 163.)

On the 10th of March, 1863, the court also decreed condemnation of certain munitions of war, part of the cargo of the Bermuda—that is to say, the powder, the saltpetre, the fire-arms, great and small, and their respective appendages, including gun-carriages, the shells, cartridges, fuzes, percussion caps, and swords, which were on board said steamer when captured—on the ground that they were *contraband of war*, destined for a hostile place, and that they were property of *enemies of the United States*, or otherwise confiscable as prize of war. The

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court, in entering this decree, declared "that the destination, immediate or ultimate, of this vessel's cargo was a hostile port; whether it was to have been transported to this port, from Nassau, in her, or by transshipment, or landing and reshipment, might have been determined by orders receivable there, or by orders which were among the papers destroyed at the time of capture, or, in the absence of instructions, may have been discretionary with her navigator; that she was, at the time of capture, navigated under instructions received at Bermuda from residents of the hostile port of destination, and that they or their agents had the control and regulation of her ulterior movements, is unquestionable. This renders the immediate destination of such parts of the cargo as consist of munitions of war less important than it might otherwise have been. Judgment as to these articles may be pronounced, independently of any question of their hostile ownership; even if their immediate destination was not absolutely hostile, it was controllable by hostile persons, whose purpose clearly was, that it should reach a hostile port."

From this decree, condemning the munitions of war on board, Alex. T. Blakely, by his proctor, appealed to this court on the 13th of March, 1863, and Fraser, Trenholm & Co., by their proctor, appealed on the same day.

The only questions before this court are, therefore, as to the correctness of the decrees which condemned the vessel and that part of the cargo consisting of the munitions of war before specified.

The district court has not yet made a decree as to the residue of the cargo.

It is contended on the part of the United States that these decrees, condemning vessel and munitions of war, are correct on these grounds:

1. *That the vessel was, when captured, actually owned by enemies.*

2. *If not then actually owned by enemies, she was so entirely possessed, controlled, and managed by enemies for the purposes of their own commerce, and so exclusively engaged in that commerce, as to have forfeited her neutral character and assumed a hostile character, which subjected her to condemnation as prize of war.*

3. *She was proceeding, when captured, with a cargo certainly destined for a blockaded port, on a voyage which had for its purpose the delivery of that cargo at such port, either by herself or by transshipment, at Nassau, to some other vessel which could more safely run the blockade.*

4. *The part of her cargo condemned, viz., munitions of war, was confiscable as enemy property, having been, when captured, in actual enemy ownership, possession and control. This is equally true of that part claimed by Blakely and of that part claimed by Fraser, Trenholm & Co.*

5. *That part of the cargo was contraband of war shipped for the purpose of reaching a hostile port of destination, and, when captured, it was proceeding to that destination in the possession and under the orders and control of enemies resident thereat. This subjected it to confiscation, whether it was to have been carried to that destination in the Bermuda, or to have been unloaded or transshipped at Nassau. These facts, with their attendant aggravations, also subject the vessel, which was owned or possessed, controlled and directed, by the same enemies, to condemnation.*

6. *That part of the cargo was also condemnable because it was proceeding, when captured, with intent to enter a blockaded port.*

7. *The destruction of a part of the ship's papers by the*

master, under the instructions of his employers, who had the actual control and direction, if they were not the owners, of the vessel and cargo, raises, under all the circumstances, a presumption, first, of hostile character; second, of destination to a blockaded port; and, third, of destination of contraband cargo for enemy use, and justifies the denial of further proof, so that condemnation on any or all of these grounds necessarily follows.

8. *The Bermuda was good prize when captured, because she was taken on the voyage next succeeding that in which she had broken the blockade of the port of Savannah.*

HISTORY OF THE VOYAGE.

The history of the Bermuda and of her arrested voyage clearly sustains all the grounds of condemnation just stated.

She was built at Stockton-on-Tees, England, in 1861, and registered in the name of Edwin Haigh, as owner, on the 2d of August of that year, with Eugene Louis Tessier as master. (Record, pp. 103, 104.) That she was really built for the house of John Fraser & Co., of Charleston, as one of the line of steamers by which that firm and its branch at Liverpool, Fraser, Trenholm & Co., prosecuted an illicit trade between Charleston and other ports of the rebel States and Liverpool, is shown by many facts, first of which is, that on the day after her registry, 3d of August, 1861, Edwin Haigh executed a certificate of sale of the vessel to Allan Stewart Hankle, and George Alfred Trenholm, (of the firms named,) of Charleston, S. C., merchants, jointly or severally, empowering them to sell the ship at any place out of the kingdom for any sum either or both might deem sufficient within twelve months from date. (Record, pp. 132, 133.) Even if no actual transfer of title occurred under this certificate, it was still, by its terms, in full operation when the vessel was captured—

27th of April, 1862—and in a prize court it is sufficient to impress the vessel with a hostile character.

In his affidavit (Record, p. 153) Haigh states that this certificate was executed to secure a sale of the vessel at *Charleston*, and that, in the same month, August, 1861, she was sent on a voyage to *that port*, although (doubtless through stress of the blockade) she was obliged to run into Savannah. Why, in his anxiety to sell the vessel so soon after her completion, he deemed it necessary or proper to subject her to the peril of capture and confiscation, by sending her to a market which he knew to be practically destroyed by an existing blockade, he has not seen fit to explain.

Thus documented, the Bermuda, under the command of Captain Tessier, one of the captains employed by Fraser, Trenholm & Co., made her first voyage from Liverpool to Savannah in the summer and fall of 1861, and returned to England the following winter, (running the blockade twice,) reaching West Hartlepool about the 8th of January, 1862, and Liverpool on the 23d of that month. (See Log.)

She was then evidently in the possession, employment, and control of the Charleston and Liverpool firm.

On the 16th of January, 1862, (a few days after she reached West Hartlepool, and a week before she arrived at Liverpool,) Fraser, Trenholm & Co., in a letter to John Fraser & Co., of Charleston, informing them that they had despatched the ship Ella with a cargo to the agent of the house at Bermuda, also stated that she would be followed by the Bermuda with goods. (Record, p. 83.)

Captain Westendorff, a citizen and resident of Charleston, had arrived in Liverpool on the ship Helen, (of which he was master, and which was owned by John Fraser & Co., of Charleston,) in December, 1861. (Record, p. 82.) On the

11th of that month Fraser, Trenholm & Co. gave Captain Westendorff a certificate of character and competency as a shipmaster, stating, among other things, that he had commanded a ship belonging to their Charleston house of John Fraser & Co.; and J. T. Wellsman, of the Liverpool house, added a special testimonial. (Record, p. 82.) Armed with these recommendations, Westendorff obtained, on the 20th of December, 1861, the British certificate of competency as master in the merchant service, required by the merchant shipping act of 1854, the business having evidently been transacted through Fraser, Trenholm & Co., whose address is indorsed on the certificate. (Record, pp. 74, 75.) On the 17th of January, 1862, after her arrival at West Hartlepool, and before her return to Liverpool, Westendorff was appointed master of the Bermuda, in place of Tessier. (Record, p. 105.) The agency of Fraser, Trenholm & Co., in obtaining for Westendorff the certificate requisite to qualify him for command, and the fact that he was appointed to the Bermuda *after* their letter to John Fraser & Co., of the 16th of January, announcing their intention to send out the Bermuda with goods, show, first, that Westendorff was appointed by Fraser, Trenholm & Co.; and second, that in fitting out the vessel for the projected enterprise, they placed her under the command of an officer known and trusted by them and familiar with the port of Charleston.

Westendorff joined the ship at West Hartlepool on the 17th of January, and took her to Liverpool. (See Log.)

During February, 1861, the crew were shipped, cargo was taken on board, and preparations were made for the projected voyage.

Of the new ship's company, the master, the first mate, and the master's brother, (who, although he calls himself a hand on board, acted as clerk,) (Record, p. 15,) and three seamen,

were citizens of South Carolina, and the second mate, the carpenter and cook were citizens of other States in rebellion. (Record, pp. 108, 109.)

The cargo was shipped under the direction of Fraser, Trenholm & Co., (Record, p. 14,) and consisted of a great variety of contraband and other articles well suited for the market of the rebellious States. The record exhibits forty-five bills of lading, of which thirty-one are for goods shipped by Fraser, Trenholm & Co., embracing leather, saddlery, stationery, printing materials, surgical instruments, drugs, hardware, shoes, boots, leggings, blankets, military caps, canvas, ropes, hawsers, submarine telegraphic cable, guns, cases of pistols, shot, spades and shovels, cotton and woollen goods, and many other articles. The other bills of lading include large quantities of powder, cartridges, guns, swords, and other material of war—two of them, in the name of Captain Blakely, embrace cannon and cannon carriages, shells, rifling machine, fuzes, limbers, and other munitions of war.

All these bills of lading declare the vessel "*bound for Bermuda,*" and the goods, &c., "to be delivered, &c., *at the aforesaid port of Bermuda, &c., unto order or assigns.*" (Record, pp. 52, 73.)

The special report of the prize commissioner, of 22d of November, 1862, (Rec., pp. 158, 159,) shows that the army cloths and munitions of war found on board, so far as the examination of cargo had then proceeded, amounted to $148,654 59. That this amount was increased by subsequent examinations is shown by the additional appraisement of 7th of March, 1863, of the ordnance material. (Rec., p. 163.)

These munitions of war and the rest of the cargo were clearly destined for the southern ports. Among them are seven cases of pistols, marked in manifest N. D., meaning, doubtless, Navy Department, and seven cases printing mate-

rials marked T. D., meaning, doubtless, Treasury Department.

McHugh, a passenger on board at the time of the capture, says that he was agent of the house of John Treanor, of Savannah, of which he was clerk, to procure a portion of the cargo on board. It consisted of dry goods, &c., shipped by B. & D. McHugh, of Belfast, to Treanor, of Savannah, worth $17,000 or $18,000. (Rec., p. 24.)

The reports of the prize commissioner and the manifest show that many other articles were found destined for the States in rebellion. Among these were cases of postage stamps, marked "Confederate States," and addressed "P. O. D.," understood to mean Post Office Department, (Rec., pp. 126, 127;) cans labelled "Postage stamp printing ink," iron frame with copper plates or dies for printing "Confederate States" five-cent postage stamps, blank paper suitable for such stamps, clarified gum, and a press. They were also marked "P. O. D." (Rec., pp. 130, 156, 159.) Military insignia were found, viz: epaulets, stars, "palmetto trees" for cap fronts, military buttons with eagle and thirteen stars, and coats of arms with North Carolina, South Carolina, and Georgia stamped thereon, (Rec., p. 152;) prints and lawns, each having a card with flag of "Confederate States;" cases of paper for bank notes stamped with "C. S. A." in water-mark, (Rec., p. 153;) submarine cable ten miles long, (Rec., p. 148;) merchandise in wrappers, addressed to John Treanor & Nephews, Savannah; hardware having engraved thereon "Courtney, Tennent & Co., Charleston;" cutlery with the name of that firm stamped thereon, with vignettes of "Jeff. Davis" and "Gen'l Beauregard," and the motto "On to Washington—Bull Run," (Rec., p. 146;) parcels directed to "T. M. Henkel, Mrs. Trenholm," and many other persons, "Charleston, S .C.," (Rec., pp. 155, 158;) fowling-pieces, manufactured for J. E. Adger

& Co., Charleston, S. C. (Rec., p. 165.) Letters were also found, one written by John James & Son to Courtney, Tennent & Co., Charleston, S. C., sending specimens of needles, &c., (Rec., pp. 149, 151;) and a package of letters addressed to William Morris, Charleston, S. C., accompanied by a large quantity of envelopes. (Rec., pp. 166, 172.) These letters show that part of the cargo to which they refer was intended to run the blockade, and that the goods were to be sent, by request of the purchaser at Charleston, through Fraser, Trenholm & Co.

These letters also show that a Major Ficklin, a commissioner of the "Confederate government," had employed some printers and engravers in Scotland to go out in the service of that government, and had purchased presses and other materials to send with them. (Rec., pp. 167, 168.) These printers and engravers, and the printing materials, were sent from England on the Bermuda, through Fraser, Trenholm & Co. The printers and engravers, named Dunn, Embleton, Keeling, McFarland, Gemmil, and Gellartly, were falsely entered on the crew-list as sailors, (Rec., p. 110,) and went on the vessel to Bermuda, where, probably, because of her long detention at that island, they left her for other means of conveyance to the rebel States. (Rec., p. 12; Graham, p. 32; Simpson, p. 36; Cassiday, p. 50.) That these persons went out as "government passengers" is shown by the letter of Captain Westendorff to Dunn, at Bermuda. (Rec., p. 86.) This letter also states that the "working materials" for the department for which these persons were sent out were taken in precisely as the rest of the cargo, and Westendorff having refused to discharge them at Bermuda, they were on board when the vessel was captured. Bill of lading No. 5 (Rec., p. 54) shows that they were shipped in the name of Fraser, Trenholm & Co.

Six other passengers—five of them citizens of South Carolina, and one a resident of Georgia—took passage on the Bermuda and were found on board when she was captured. All of them admit that their purpose was to get to the south. They are said to have taken passage to Bermuda, but they remained on that island during the detention of the vessel there, and re-embarked on her when she left for Nassau, in prosecution of their purpose to reach their respective homes. None of them paid their passage money on board. Mr. Huger is not proved to have paid or agreed to pay for his passage. Mr. Sparkman states that his passage was paid in Liverpool by a friend, but he does not know to whom, nor what its amount was, nor does he disclose the name of his friend. (Rec., p. 19.) Mr. Pringle states that he *agreed* to pay Fraser, Trenholm & Co. for the passage of himself and two sons. (Rec., p. 20.) the inference being that the money was to be paid to John Fraser & Co., at Charleston, and Mr. McHugh states that he paid Fraser, Trenholm & Co. for his passage to Bermuda. (Rec., p. 25.) Captain Westendorff knew nothing of the passage money of any of the passengers; presumes that they had paid it, and says that the business was transacted at Fraser, Trenholm & Co.'s, Liverpool. They *agreed* to pay their passage money from Bermuda to Nassau at Nassau. (Rec., p. 12.) It is evident that this money was not payable to Westendorff, but was probably to be paid to John Fraser & Co.

These passengers were also falsely entered on the crew list at Liverpool, by disguised names, as sailors, for which Captain Westendorff gives the reason that it was to evade the law which requires that vessels taking passengers should be inspected, which would have taken a week. (Rec., p. 11.) This does not explain the necessity of entering the passengers by false names; besides which the vessel *had* a

passenger certificate under the Merchants' Shipping Act, dated 16th August, 1861. (Rec., pp. 100, 101.) A more probable reason for the fraudulent entry might be found in the necessity of allaying the suspicions of blockade-running, which, according to the letter on page 106 of the record, the outfit of the vessel at Liverpool had excited.

On the 27th of February, 1862, the Bermuda cleared at Liverpool for Bermuda, (Rec., pp. 147, 148,) and on the 1st of March set sail for that island, where she arrived on the 19th. (Rec., p. 8.)

It will not be questioned that the vessel was laden and controlled at Liverpool, and the voyage projected, supervised, and directed by Fraser, Trenholm & Co. The facts that that firm, whose principal place of business is Charleston, where the leading partners reside, were then not only the head of the blockade-running business at Liverpool, but also the financial agents of the rebel government in England, by appointment of, and in regular correspondence with that government, are well-known matters of public history, of which the court in this case will take judicial cognizance. (See extracts from Diplomatic Cor. U. S., 1863, vol. 1, cited in Appendix. As to rules of evidence in prize courts, see opinion of Dr. Lushington; Deane on Blockade, 123. See also ibid., 89, and *The Juffrouw Elbrecht*, 1 Rob., 127; *Experiment*, 8 Wheat., 161.) This voyage was essentially the venture of the persons who constituted that firm, represented at Liverpool by that name, and at Charleston by the name of John Fraser & Co. Whether by actual ownership, or as the representatives of persons who do not choose to disclose themselves or assert title independently of them, they must be accepted, in this case, as the real owners of all of the contraband cargo now before this court on appeal, (except that

portion claimed by Blakely,) as well as of much the greater part of the residue of the cargo.

That the vessel was also actually owned by them, there is good reason to believe from the whole evidence. But since, in a prize court, it will be enough to condemn her that she was in the actual possession, control, and use of public enemies, in the prosecution of enemy commerce, and aiding by that commerce the enemy cause, with the full knowledge and consent of the British subject who claims to own her, we will direct attention to the whole evidence without attempting to separate that which proves enemy ownership from that which proves only enemy possession, control and use for the purposes of enemy commerce at the time of capture.

Graham, the chief engineer, (Rec., p. 32;) Noble, one of the crew who lived in Charleston, (Rec., p. 34;) and Heenan, (Rec., p. 41,) on their examination *in preparatorio*, state that Fraser, Trenholm & Co. were owners of the vessel. The letter of 16th February, 1862, written by one of the mates whilst the vessel was lying at Liverpool, to A. Gray, (Rec., pp. 105, 107,) refers to Fraser, Trenholm & Co. as "the owners," the reference to that firm being shown by the allusion to Wellsman, who was one of the firm. (See Rec., p. 82.) So also the letter of Captain Tessier to Captain Westendorff of 20th February, 1862, (Rec., p. 80,) in which he requests Westendorff to inquire at Liverpool for a pair of sea-boots he had ordered, and have them sent to the office of "our owners," showing that Tessier, who had command of the vessel, understood her to be owned by Fraser, Trenholm & Co. That he referred to that firm as "our owners" is shown by the next sentence.

Although the pretence of the claimants throughout is that Fraser, Trenholm & Co. were the ordinary forwarding agents for Haigh, (see Wise's affidavit, Rec., p. 117—Haigh's

letter, p. 145,) their conduct and that of John Fraser & Co., throughout the voyage, show that they exercised the authority and control of owners over both vessel and cargo, Haigh, so far as appears, having nothing to do with either.

We have seen that on the 16th of January, 1862, immediately after the arrival of the Bermuda in England, Fraser, Trenholm & Co. had written John Fraser & Co. at Charleston, that *they* had despatched the ship Ella with a cargo *to the agent* of that firm at Bermuda, and that she would be followed by the "Bermuda" steamer, with goods. (Rec., p. 83.)

On the 28th of February, 1862, the day before the vessel sailed, Fraser, Trenholm & Co. wrote a letter of instructions to Captain Westendorff directing him to proceed to Hamilton, Bermuda, *and there deliver his cargo as per bills of lading*, and enclosing a letter to N. T. Butterfield, the agent of John Fraser & Co. at Bermuda, who was to assist him in the purchase of coals and in the disbursements of his ship. They also furnished the captain with bills for £500, to pay his disbursements. Instructions were to follow him as to a return cargo. They stated that ship and cargo were covered by insurance to Bermuda, and directed him, *in case he had to take cargo from Bermuda to St. John, N. B., or Nassau, N. P.*, that he should call on their friends, W. & R. Wright, at the former, and H. Adderly & Co. at the latter place. This letter was signed by them as "agents of the owner." (Rec., pp. 73, 74.)

Although it is probable that the part of this letter which refers to taking cargo from Bermuda to St. John was intended to deceive any cruiser who might overhaul the Bermuda, the letter, nevertheless, clearly enough shows how complete was the control of Fraser, Trenholm & Co. over vessel and cargo.

On the same day, 28th February, 1862, the same firm wrote by the Bermuda to their principal house, John Fraser & Co., or their authorized agent, Hamilton, Bermuda. (Rec., p. 79.) As this letter tends to throw light on the real destination of the vessel and cargo, it will again be referred to. It is here cited as one of the facts showing the control of the vessel and cargo to have been in Fraser, Trenholm & Co., and to have been transferred by them at Bermuda to John Fraser & Co., of Charleston.

John Fraser & Co. having been informed by letter of Fraser, Trenholm & Co. of the 16th of January, of the despatch of the Ella to their agent at Bermuda, to be followed by the Bermuda steamer, the first-named firm, in anticipation of the arrival of these vessels at that place, wrote from Charleston on the 5th of March to the agent, Butterfield, directing him to cover all goods *as above*, (i. e., by the Ella or Bermuda,) or any *other* goods *for them*, fully by fire insurance, whether discharging or discharged. (Rec., p. 83.)

On the 1st of April, 1862, John Fraser & Co. again wrote to their agent, Butterfield, at Bermuda, by the blockade-running steamer Economist, directing him to give certain instructions to the masters of the Bermuda and Ella, the instructions to Captain Westendorff being to take in the tea and other light articles per Ella (if he had room for them) and proceed to Nassau, reporting himself, on arrival there, to Adderly & Co. (Rec., pp. 83, 84.)

These letters, having escaped the perils of blockade-running, reached Butterfield on the 19th of April, and he, on the same day, wrote to Westendorff enclosing copies of them, and requesting to hear as to the fire insurance, and whether any of the articles alluded to were to be soon discharged, and to what value. (Rec., p. 84.) These articles, consisting of tea, coffee, bagging, and bale rope, were part of the cargo sent out by

Fraser, Trenholm & Co consigned to John Fraser & Co., Charleston, with information that the cargo was shipped by their friends in Liverpool, but that the disposition of them was left entirely to John Fraser & Co., *in any market to which they might please to direct them.* (See letter 23d January, 1862, Rec., pp. 77, 78.)

On the 21st of April Westendorff, in reply to Butterfield, inquires whether it would not be advisable to effect an insurance on *ship and cargo* from Bermuda to Nassau, referring to the statement in Fraser, Trenholm & Co.'s letter of instructions to him that the ship and cargo had only been insured to Bermuda. (Rec., p. 84.)

On the same day Westendorff wrote to Dunn, as before stated, referring to his instructions to proceed to another port, and refusing to discharge the "working materials" with which Dunn and his companions were going out in the government employ. (Rec., p. 86.)

The Bermuda had thus remained at the island of Bermuda from the 19th of March with her cargo untouched, awaiting orders from John Fraser & Co. from Charleston, although her bills of lading declared Bermuda to be her port of delivery, and her letter of instructions (p. 73) directed the delivery of her cargo at that island as per bills of lading. The orders from John Fraser & Co. having reached her through Butterfield (p. 84) on the 19th or 20th of April, her captain prepared to proceed, in obedience to them, to Nassau, taking on board the tea and other articles from the Ella, as directed by John Fraser & Co., and also the six passengers, Messrs. Huger, Sparkman, Pringle, &c.

Whilst lying at Bermuda, Westendorff, who had reported to Butterfield, as instructed by Fraser, Trenholm & Co., received from him the money on his bill of exchange. (Record, p. 87.) Butterfield also informed him that the insurance could

not be effected, *from the circumstances in which the vessels were.* (Record, p. 87.)

On the 22d of April Westendorff cleared from Bermuda to Nassau, (Record, p. 105,) and set sail for that port on the 23d. His vessel was captured on the 27th, whilst on the route to Nassau in obedience to the Charleston orders.

Although the Bermuda started with documentary evidence which, doubtless, would have given full information as to the actual ownership and destination of ship and cargo, careful provision had been made for its destruction in the event of capture. Westendorff states that all the letters, papers, and other instruments of writing which they had on board when the vessel sailed were given up at the time of capture, except two small boxes and a package, which he understood contained postage stamps, and a bag, which he had understood contained letters, and which *he was instructed* to destroy in case of capture. The two boxes were thrown overboard, and the bag was burned by his orders and in pursuance of his instructions. (Record, p. 12.) What these papers were, and by whose instructions they were destroyed, appears, in part at least, by the letter of Fraser, Trenholm & Co. to John Fraser & Co. or their agent, of 28th February, 1862, (Record, p. 79,) in which they inform the principal house that the letters they had written by that opportunity, (the Bermuda,) with invoices and bills of lading of the cargo, were very full in every particular, &c. They add, "We think that great care should be taken to prevent the loss of any of the invoices or bills of lading; but should this unfortunately happen, duplicates can be furnished hereafter," &c. "In case of there being an opportunity of sending the letters forward with the invoices and bills of lading, *we cannot too strongly impress upon you the adoption of the most certain means of preventing any of them falling into improper hands.*" A copy of this

letter was found in possession of Captain Westendorff when the vessel was captured.

The papers destroyed at the time of capture were the documentary evidences of ownership and destination of ship and cargo, and they were destroyed by the captain in obedience to previous orders from John Fraser & Co., at the suggestion of Fraser, Trenholm & Co.

One of the passengers, Huger, also destroyed, at the time of capture, a number of letters, which, he says, were intrusted to him by Americans in Europe, directed to persons in the south. (Record, p. 17.)

The ownership, employment, and control of the Bermuda by the Charleston and Liverpool firm in the prosecution of their regular commercial intercourse between those ports is further shown by the fact that the same parties had, under their control and apparent ownership, other vessels engaged in the same trade between those ports, with which vessels the Bermuda was directly connected in that trade. They constituted together a line of ships between Liverpool and Charleston, established, controlled, and conducted by these persons, with the aid of agents at Bermuda and Nassau, N. P.

We have seen that Westendorff came out from Charleston to Liverpool in December, 1861, previous to his appointment to the Bermuda, in command of the Helen, a ship owned by John Fraser & Co., of Charleston. (Record, p. 82.)

The Ella, of this line, was despatched from Liverpool on or before the 16th of January, 1861, and Fraser, Trenholm & Co. informed the agent of John Fraser & Co., at Bermuda, in the same letter, of her departure and of their intention to follow her by the Bermuda. The instructions of John Fraser & Co. relative to the cargoes of both were also communicated to their agent in the same letters. (Record, pp. 83, 84.) By their orders Captain Carter, of the Ella, transferred, at Ber-

muda, a portion of his cargo to the Bermuda, to be further conveyed on its route to the common destination. (See letters, pp. 83, 84, and Westendorff's testimony, pp. 11, 12.)

That the cargo of the Ella, thus transshipped to the Bermuda for further progress on the way to Charleston, was, like the cargo of the Bermuda, shipped and invoiced for the island of Bermuda, there to be placed under the orders of John Fraser & Co. for disposal in any market to which they might see fit to send them, see invoices, (Record, p. 77) and letter of Fraser, Trenholm & Co. to John Fraser & Co., of 23d January, 1862. (Record, pp. 77, 78.)

This letter shows one of the methods in which the business of the line of ships run by the two firms between Liverpool and Charleston was conducted.

The Bermuda was started from Liverpool under similar instructions; but after her arrival at the island of Bermuda, the Charleston house, who then assumed control of her, decided that she should prosecute her voyage beyond that point.

This letter also discloses the name of another vessel employed by the same parties in the same business, viz., the Albert, which was to go to Nassau, and, after landing her cargo there, proceed to Rio for a cargo of coffee, with which she was to return to Nassau *for orders*. (Record, p. 78.) What is meant by the word *orders*, so frequently used in the vocabulary of these firms, may be easily divined.

Another vessel (a steamer) belonging to this line, and proved to have been purchased by Fraser, Trenholm & Co., for the business of blockade-running, was the Herald. The letter written by one of the officers of the Bermuda to A. Gray, whilst she was at Liverpool taking in cargo, dated 16th February, 1862, and found on board when she was captured, thus speaks of the Herald: "Our tender left yesterday * *; they bought a light-draught boat at Dublin, used to run the mail

once, called the Herald; length 280 feet, &c. * *; average speed 18½ knots per hour; razeed all her lower cabins to make cargo space; shipped crew for twelve months for some port or ports south of Mason and Dixon's line; three captains on board—one an Englishman, nominal; another an experienced coast pilot from the Potomac to Charleston; another do. do. from Charleston to the San Juan river, in Texas. If the Yankees reach her they are smarter than I give them credit for. She waits our arrival in Bermuda; goes first into Charleston, though, to see about the stone fleet. Don't tell Tessier I gave you the information; he'll write straight to the *owners* and tell them I am a traitor," &c. (Record, pp. 106, 107.)

According to this letter, the Herald left Liverpool for Bermuda on the 15th of February. Pierson, a fireman on the Bermuda, says, on his examination, that the Herald, which belonged to Mr. Fraser, of the firm of Fraser. Trenholm & Co., left Liverpool before the Bermuda, but did not reach the island of Bermuda until after the Bermuda arrived there. (Record, p. 46.) Curran says the cause of her detention was that she broke down and went into Plymouth for repairs. (Record, p. 47.) The Bermuda brought out an engineer, who joined the Herald at Bermuda. (Record, p. 46.) Farraly states that the Herald was at Bermuda, and they understood she was intended to run the blockade, but the captain who brought her out from England refused to run the blockade; that the talk at Bermuda was that there were other captains on board the Herald, and that they were trying to get one of these captains in command; it was also the talk that the Herald was connected with the Bermuda. (Record, p. 49.) The captain "who brought her from England" was doubtless Captain Mitchell, to whom and to whose voyage Tessier refers in his letter to Westendorff, written 20th February, (five days after the Herald left Liverpool:) "Captain Mitchell must have had a

trying time since he sailed. I hope he kept her well to the southward after leaving the channel. To take the H. across the Atlantic at this season of the year will require some working of Tom Cox's traverse." (Record, p. 80.) After his arrival at Bermuda, 22d April, 1862, Captain Mitchell drew a bill on Fraser, Trenholm & Co., at Liverpool, in favor of Captain C. W. Westendorff, for £258 10*s.* 10*d.*, to be charged to account of steamer Herald, (Record, p. 77,) showing that Westendorff advanced to the Herald that amount.

The steamer Economist was another vessel of this line, which, while the Ella, the Bermuda, the Albert, and the Herald were making their way from Liverpool in the service of their common owners, with cargoes for the ports of the southern States, was returning from Charleston to Liverpool in the same service. She left Charleston about the 1st of April, 1862, and, escaping the blockading cruisers, reached Bermuda about the 19th of that month, where her captain presented his letter of introduction and credit, dated April 1, from John Fraser & Co., of Charleston, to their agent, Butterfield, instructing him to furnish coal and supplies for the Economist, and to draw for the cost thereof on Fraser, Trenholm & Co., at Liverpool. (Record, p. 83.) Butterfield, obeying these instructions on the day he received them, writes to Westendorff that the Economist is being supplied with coals, and suggests that it would be well for Westendorff to inquire the price of them. (Record, p. 84.) This fact, and the fact that Westendorff, and not Butterfield, advanced money to the Herald at Bermuda, render it probable that Westendorff had a closer connexion with the general trade of the two houses between Liverpool and Charleston than that which grew out of the command of one of their vessels. His care for their interests was not confined to those which belonged to his own ship.

These facts show that the Bermuda was one of a line owned, employed, and controlled by the two houses at Liverpool and Charleston, engaged in direct and exclusive trade between those ports, under the auspices of those houses, and running as regularly and frequently as the difficulties of blockade-breaking would allow.

I. QUESTION OF HOSTILE CHARACTER.

1st. If the foregoing facts establish the proposition that the Bermuda, at the time of her capture, was owned by the firm of John Fraser & Co., of Charleston, she was of course subject to condemnation as enemy property, upon the principles declared by this court in *The Amy Warwick* and other prize cases, (2 Black., 635,) that firm being actually resident and engaged in business in Charleston.

So also any portion of her cargo shown by the evidence to belong to that house is condemnable for the same reason.

But John Fraser & Co., of Charleston, had a branch house at Liverpool, doing business as Fraser, Trenholm & Co. There is no evidence that this house was engaged in any business separate from, or independent of, the principal house at Charleston; but the whole proof shows that it was a *branch* of that principal house, established at Liverpool, to do its business. (Rec., pp. 15–21.) The Liverpool house certainly had no trade to Charleston, Bermuda, or Nassau, that was not shared and directed by the Charleston house. And it will not be questioned that the interest of Fraser, Trenholm & Co. in the Bermuda, her cargo, or voyage, whatever that interest was, was shared by the Charleston house. In this venture the two firms were substantially one house, with one directing agency at Liverpool, and the other at Charleston.

If, therefore, the vessel, or any portion of the cargo, constituted part of the assets of the two firms, owned by them, or

either of them, in their partnership relations, according to any rule of ownership among partners, the vessel and portion of cargo so owned were condemnable as enemy property, for the chief place of business and residence of the persons composing the two firms was Charleston, not Liverpool, and there is nothing in the case to show any separate and exclusive interest in any neutral partner resident in Liverpool. The whole interest of the firm is enemy property, and condemnable as such, irrespective of the destination of the vessel and cargo, or of the character of the cargo.

No authority can be needed to show the hostile character of ship or cargo owned by the members of the firms of John Fraser & Co., and Fraser, Trenholm & Co., resident at Charleston.

Nor is there less doubt of the hostile character of those members of the firms resident in Great Britain, if any reside there, as to property engaged in the Charleston and Liverpool trade of the firm.

In *The Jonge Klassina*, Sir William Scott said: "A man may have mercantile concerns in two countries; and if he acts as a merchant in both, he must be liable to be considered as a subject of both, with regard to the transactions originating respectively in those countries." And he adds, that it is not even decisive against his being a subject of the enemy country that he has no counting-house in that country. (5 Rob., 303.)

In *The Herman*, Sir William Scott said: "The personal domicile of the claimant is at Embden, where he resides and has a house of trade; he is only connected with this country by his partnership in a house here, which is to be taken in a manner as collateral and secondary to his house at Embden; that he may carry on trade with the enemy at his house in Embden cannot be denied, provided it does not originate from his house at London, *nor vest an interest in that house.*" (4 Rob., 228.)

The case of *The Portland and nine other ships* (3 Rob., 41) still more precisely establishes the distinction, in respect of liability to capture, between the trade which a merchant may carry on to his hostile, and that which he may carry on to his neutral, establishment. This case, like all the others, clearly recognizes that, whilst a merchant residing in a neutral territory is not to be held liable to capture as to the property engaged in the neutral business, yet that in the trade in the enemy's country and with enemy commerce, he stands in the same hostile position as if he lived there. *The Franklin*, (6 Rob., 127;) *The Phœnix*, (5 Rob., 21.) See also *The Vriendschap*, (4 Rob., 167,) and other authorities cited below, especially the case of *Zacharie, Coopman & Co.*, referred to in *The Vigilantia*, (1 Rob., 15.)

This principle has been fully confirmed by our own courts. Where a person is engaged in the ordinary or extraordinary commerce of an enemy's country, upon the same footing and with the same advantages as native resident subjects, his property employed in such trade is deemed incorporated into the general commerce of that country and subject to confiscation, be his residence where it may. *San José Indiano*, (2 Gallison, 268;) *The Ann Green*, (1 Gall., 286;) *The Friendschaft*, (4 Wheaton, 105.)

2d. But whether the vessel was actually owned by the persons composing the firms of John Fraser & Co., or Fraser, Trenholm & Co., or by Edwin Haigh, a subject and resident of Great Britain, her predicament was that of hostile property at the time of capture, and as such she was good prize. She had been fitted out, laden, and started on her voyage by the Liverpool branch of a Charleston house, being then in the exclusive possession and under the absolute control and direction of that branch, with an enemy master and enemy officers, and laden with a cargo largely contraband, all of which was shipped

with ultimate enemy destination and for enemy use. This cargo was all shipped, as appears by the bills of lading, for the island of Bermuda, and the vessel cleared therefor, whereas the fact of her lying at that island five weeks, and then leaving it with the cargo untouched, shows that the ship and cargo left England with a false and pretended commercial destination, and the letters and subsequent facts show that the master had instructions not to unliver his cargo at that place. The vessel sailed under instructions from the enemy house at Liverpool to report to the agent at Bermuda of the enemy house at Charleston, and it is so reported at Bermuda. The vessel and cargo (there being no special consignment by the bills of lading) were therefore consigned to the enemy house at Charleston. That house, on the arrival of the vessel at Bermuda, sent orders from Charleston directing vessel and cargo to proceed to Nassau, thus taking charge, control, and direction of vessel and cargo and their movements, so that when captured *she was sailing towards the usual route by which direct trade with Charleston was prosecuted, with a cargo largely contraband, and evidently destined for that port, under Charleston orders.* At that time the control of the Charleston house over ship and cargo was, so far as the evidence discloses, as absolute and exclusive as if both were entirely owned by that house. And if the court believe that the contraband and other cargo was ultimately destined for the States in rebellion, whether by transshipment to other vessels or not, that absolute and exclusive control of the Charleston house was exercised for the benefit of enemy commerce; and not only for the benefit of enemy commerce, but for the benefit of the rebel government itself, since the evidence discloses that the vessel carried, as part of her cargo, postage stamps, munitions of war, and printing materials for that government, shipped in the name of the Liverpool house, and had carried

on the same voyage, as passengers, persons in the employ of that government, who were called by the master "my government passengers." The whole enterprise was enemy trade, and the vessel was, in fact, when captured, a transport for the rebel government. She was also controlled and directed by the Charleston house, in connexion with other vessels, all forming a regular line of trade between Liverpool and Charleston, in the employ or ownership of the two houses, carrying goods between those points, and some of them avowedly running the blockade, the Bermuda having received her orders to proceed to Nassau by one of the blockade-runners of the line.

If, under these circumstances, Edwin Haigh actually owned the ship, he must be treated as having fully known and consented to this absolute and exclusive control and use of her by enemies for the purposes and in the interests of enemy commerce and the enemy government; for, immediately after her completion, he executed in England a "certificate of sale," being an unlimited power of attorney, to one or more members of the Liverpool and Charleston firms, *residing in Charleston*, to sell the vessel, which power of attorney was by its terms in full force when the ship was captured. He admits that it was executed to enable them to sell the vessel *at Charleston*, where he was desirous she should be sold, and that he started her in the same month she was registered on a voyage to that place. He knew that the port of Charleston was then blockaded by the United States, and he therefore admits that he sent her to break the blockade, which she did, not at Charleston, but at Savannah. (Rec., p. 153.) On her return she was placed or continued under the exclusive and absolute control of the enemy house, a member of which was, at that time, empowered to sell her at an enemy port. To doubt that Haigh knew and consented to the uses to which she was to be appropriated by

her enemy managers would be to reject the plainest conclusions of evidence.

Besides, he was bound to inquire and know in what trade an enemy house would use a ship which, according to the stories of both, (Rec., pp. 117, 133,) he was committing thus absolutely to their control *in time of war without a written charter-party or special contract.* The law holds him responsible for the acts of those to whom he committed his ship; and if he saw fit to delegate such general powers to others, which they misused to his prejudice, his remedy is against them. *The Columbia,* (1 Rob., 154.) The same principle was recognized by this court in *The Hiawatha,* (2 Black., 678,) where the cargo was held to share the fate of the vessel, although its owners were themselves innocent of the breach of blockade. He is accordingly fully affected with knowledge of their conduct, and must answer for its consequences.

She was, therefore, *whether actually owned by enemies or not,* hostile property, and as such good prize when captured

The authorities to this point are full and explicit.

In the case of *The Jonge Emilia,* one of the ten ships claimed by Mr. Ostermeyer, a neutral merchant domiciled at Blankenese, Sir William Scott condemned the ship on the ground that she appeared to have been altogether left in the hands of French [enemy] merchants and employed for seven voyages successively in the trade of France. *The Portland and nine other ships,* (3 Rob., 52.)

"It is a possible thing," says Sir William Scott in *The Rendsborg,* (4 Rob., 124,) "that the *commerce* may not be neutral, although the *property* is; and if that is the case, *the mere neutral ownership will not be a sufficient title to restitution.*"

In the same case the same high authority, in defining the rights of neutrals engaged in trade with an enemy, declares

that it is "the grand fundamental duty of neutrality that he is not to relieve one belligerent from the infliction of his adversary's force, knowing the situation of affairs upon which the interposition of his act would have such a consequence. Neutrals may not be bound to inquire very accurately, but if it is clearly declared, either by the fact itself or, *a fortiori*, by express acknowledgment, they are bound to take notice of it and regulate their conduct accordingly. * * * If a belligerent come and say, 'I am in the utmost distress; my enemy is all-powerful; without your assistance I am a lost man;' in such a case it is an invitation which he is manifestly not at liberty to accept. He cannot afford such assistance without being guilty of a direct interposition in the war. Nor does it affect the justice of the case at all that such assistance is not given gratuitously; though done *lucrandi causa*, it is not less an unlawful interposition. A man does not send contraband out of pure love of the enemy, but with a view of obtaining advantage to himself from the relief of the enemy's distress. If it is a sound principle of the law of nations that you are not to relieve the distresses of one belligerent to the prejudice of another, any advantage that you may derive from such act will not make it lawful. The adversary has a full right to destroy his commerce. * * He has the power as well as the right, and you are not, from a prospect of advantage to yourself or from any other motive, to step in on every cry out for help and rescue him from the gripe of his adversary." (4 Rob., 126, 127.)

The direct application of these principles to a vessel employed as the Bermuda was, in aiding the enemy by transporting supplies of such articles, contraband and otherwise, as their condition under the pressure of the blockade made absolutely necessary, (some of them being carried directly for government use,) is too obvious to require further remark.

In the case from which the foregoing extract is made Sir William Scott condemned neutral property engaged in enemy trade where it had not a tithe of the aggravating circumstances in which the Bermuda was taken.

So also he condemned the cargo owned by Mr. Grant, a neutral American, who, having collected money in France, invested it in a speculation of sending a cargo of butter to Lisbon, because that port afforded a favorable market. "What is this," he asks, "but a *voluntary mercantile speculation in the enemy's trade?* It is not the case of a man withdrawing his property to England, *but engaging in new speculations*, and standing on the same footing as any other merchant in the country of the enemy. If *the national character of Mr. Grant stood perfectly clear*, this circumstance alone would distinguish the present case and take it out of the range of those considerations which produced restitution of this gentleman's property in two former cases. *The Dree Gebroeders*, (4 Rob., 234.)

On the principle that commerce for enemy benefit, under enemy control, impressed a hostile character on property, even though owned by neutrals, Sir William Scott invariably condemned vessels transferred from an enemy to a neutral, but continuing in enemy trade under enemy control, holding, not merely that the fact of such transfer under those circumstances would be deemed evidence that the transfer was collusive, but that even where the transfer was proved to be *bona fide* it was void in law.

The leading case is *The Vigilantia*, (1 Rob., 1,) which was a ship sailing under Prussian colors, and captured on a voyage from Amsterdam to Greenland, laden with stores, &c., for the Greenland fishery. The claimant, a citizen of Embden, and a neutral, alleged that he had purchased the vessel from an enemy in Holland. Sir William Scott held the ves-

sel to be enemy property (Dutch,) even supposing the claimant to be the actual proprietor, and resident at Embden, because she was a Dutch-built fishing vessel, trading regularly between Amsterdam and Greenland; purchased in Holland for the avowed purpose of pursuing the same course of commerce; in all respects employing and feeding the industry of that country; commanded by a Dutch captain; manned by a Dutch crew, and bringing back the produce of her voyage for Dutch consumption and Dutch revenue. He declares that, unless it can be maintained as a rule, without any exception whatever, that the domicile of the proprietor constitutes the national character of the vessel, the ship must be condemned, even if she had really been transferred. He adds: "On that point I conceive the rule to be, that where there is nothing particular or special in the conduct of the vessel itself, the national character is determined by the residence of the owner; but there may be circumstances arising from that conduct which will lead to a contrary conclusion." As, for example if a ship is navigating under the pass of a foreign country, she is considered as bearing the national character of the nation under whose pass she sails. "In like manner, and upon similar principles, if a vessel purchased in the enemy's country is, by constant and habitual occupation, continually employed in the trade of that country, commencing with the war, continuing during the war, and evidently on account of the war, on what ground is it to be asserted that that vessel is not to be deemed a ship of the country from which she is so navigating, in the same manner as if she evidently belonged to the inhabitants of it?" He mentions the case of *Zacharie, Coopman & Co.* before the lords of appeal, where it was held, that if a person entered into a house of trade in the enemy's country in time of war, or continued that connexion during the war, he should

not protect himself by mere residence in a neutral country; and adds: "That decision instructs me in this doctrine, a doctrine supported by strong principles of equity and propriety, *that there is a traffic which stamps a national character on an individual, independent of that character which mere personal residence may give him.*" (1 Rob., 15.)

To the same effect are *The Embden*, (1 Rob., 16,) *The Endraught*, (*Ib*, 22.) where Sir William Scott said: "If the claimant, from views of interest, choose to engage himself in the trade of a belligerent nation, he must be content to bear all the consequences of such a speculation. * * If he confines his vessel exclusively to the enemy's navigation, he is liable to be considered as an enemy with respect to the concerns of such a vessel;" and *The Bernon*, (1 Rob., 102,) where, considering the same question of the validity of the purchase of an enemy's vessel by a neutral in time of war, he said, "The employment of a vessel is, *in limine*, a point very proper for inquiry, *for it may impress a national character.*"

The only feature which distinguishes these cases from the Bermuda is, that the vessels had been purchased by the neutral claimants from enemies. But by the English law, such purchase, without the other facts of remaining in enemy trade under enemy command, was allowable. *The Welvaart*, (1 Rob., 124.) The fact of purchase from an enemy, if the transfer were actual and *bona fide*, does not, therefore, standing by itself, distinguish these cases, *in principle*, from our case. The wrong to belligerent rights, which subjects the vessel to condemnation in these cases, rests in their continued employment in enemy trade, under enemy control, *employing and feedlng the enemy's commerce and industry.* In these essential features the Bermuda was as much hostile in character as if her owner actually resided in Charleston. If she had been purchased

by a resident of that place, under the authority conferred by Haigh, and in accordance with his wishes, she could not have been more thoroughly in enemy service than she was, and her capture would not have been more effective in *weakening the enemy and diminishing his resources* than her capture now is. And this is the well-known ground of the right of belligerent capture, and the true test by which hostile character is ascertained.

The foregoing cases sustain the proposition that the hostile character of property which subjects it to condemnation is impressed upon it as much by its voluntary engagement in the trade of the enemy, under his control, and its consequent value as a source of wealth and strength to him, as by its being owned by residents of the enemy country. Indeed, the reason why property owned by a resident of the enemy country is condemned in a prize court is, that, as the property of a resident, it constitutes so much of the wealth of that country, and its capture withdraws it from the resources of, and to that extent weakens, the enemy. Exactly the same reason induced the condemnation of the property taken in trade with the French in the case of *The Jonge Emilia*, and with the Dutch in the other cases before cited, where the owners were residents and subjects of neutral countries, but where their property, being engaged in enemy trade for his benefit, either at his own instance and to supply his wants created by belligerent pressure, (as in *The Rendsborg*,) or under his control and direction, (as in *The Vigilantia*, *The Embden*, *&c.*,) was "feeding his commerce and industry" and adding to his resources.

Another class of cases which rests on and illustrates the principle that hostile character is impressed upon property by peculiar circumstances connected with it which make it a source of enemy strength, even though owned by a neutral person, is

Spain was from North America, and not from the Spanish colony of Laguayra. Considering this question, Sir William Grant said: "Nobody has ever supposed that a mere deviation from the straightest and shortest course in which the voyage could be performed would change its denomination, and make it cease to be a direct one within the intendment of the instructions. Nothing can depend on the degree or the direction of the deviation, whether it be of more or fewer leagues—whether towards the coast of Africa or towards that of America. Neither will it be contended that the point from which the commencement of a voyage is to be reckoned changes as often as the ship stops in the course of it; nor will it the more change because a party may choose arbitrarily, by the ship's papers or otherwise, to give the name of a distinct voyage to each stage of a ship's progress. The act of shifting the cargo from the ship to the shore, and from the shore back again to the ship, does not necessarily amount to the termination of one voyage and the commencement of another. It may be wholly unconnected with any purpose of importation into the place where it is done. * * * Let it be supposed that the party has a motive for designing to make the voyage appear to begin at some other place than that of the original lading, and that he, therefore, lands the cargo purely and solely for the purpose of enabling himself to affirm that it was at such other place that the goods were taken on board; would this contrivance at all alter the truth of the fact? Would not the real voyage still be from the place of the original shipment, notwithstanding the attempt to give it the appearance of having begun from a different place? The truth may not be always discernible; but when it is discovered, it is according to the truth and not according to the fiction that we are to give the transaction its character and denomination. If the voyage from the place of lading be not really ended, it matters not by what acts the

party may have evinced his desire of making it appear to have been ended." (5 Rob., 393–396.)

The *Thomyris* (Edwards, 17) was an American ship, laden with barilla which had been brought to Lisbon from Alicante, in Spain, in an American ship, and there put on the *Thomyris* to be carried on to Cherbourg. The claimants contended that there had been not only a transshipment, but an actual sale of it at Lisbon. But Sir William Scott held that the ostensible sale and importation into Lisbon did not break the continuity of the voyage. He said: "In all cases of this description it is a clear and settled principle that the mere transshipment of a cargo at an intermediate port will not break the continuity of the voyage, which can only be effected by a previous actual importation into the common stock of the country where the transshipment takes place. * * * If there was nothing more than a transshipment of the cargo from one vessel to another, that will not alter the transaction in any respect, and it must still be considered as the same continuous voyage to the port where the cargo was ultimately to be delivered."

In all these cases the question is, what was the *intention* with which the voyage was projected and prosecuted? And when it has been established that the intention is to prosecute the voyage to the interdicted port, that intention is presumed to continue until the claimant of the captured property can show by affirmative evidence that it has been abandoned and another intention substituted for it. This is forcibly illustrated by *The Minerva*, (3 Rob., 229,) an American ship sailing from Languera, a Spanish settlement, to Corunna, and captured by a French vessel. The Frenchman was carrying her into a French port when she was retaken by a British cruiser. The vessel and cargo were claimed by one person, who contended that when the British capture was made, the voyage of the Minerva was altered, and she was not, in fact, proceeding

to her original destination. But Sir William Scott held she must still be considered in law as proceeding on her original voyage, though controlled, in fact, by the overbearing necessity of the moment. He said: "I am of opinion that this case is to be determined by the nature of the original voyage. If the destination was diverted only in consequence of a *vis major*, which the party was unable to resist, I cannot consider it as a defeasance of the original illegality any more than if the diversion had been occasioned by the temporary fury of the elements. In both cases the original movement of the vessel must be considered; *to which it must be presumed she would again immediately recur as soon as an opportunity presented itself.*" Although in this case Sir William Scott condemned only the cargo, and restored the ship with forfeiture of freight and expenses, yet in the subsequent case, in the same year, of *The Jonge Thomas*, in the lords, the court of appeal considered the illegality to attach as strongly *to the ship* as to the cargo, and condemned the ship also. (3 Rob., 233.)

The principle that the continuing intention to proceed to the interdicted port is presumed, was also recognized in the case of *The Imina*, (3 Rob., 167,) though in that case it was not applied, because it was clearly proved that the master changed his purpose of proceeding to that port (Amsterdam) on learning that it had been declared in a state of blockade, and had shaped his course for Embden.

These cases, then, establish that if a vessel start from one port with intent to go upon a voyage to another port, which voyage between those ports is, for any reason, unlawful, the fact that the vessel deviates to and stops at some other port from which an original voyage to the ultimate port might be lawful, will not break the continuity of the unlawful voyage to the ultimate port. It is held to be one voyage, its unlawful character resulting from the guilty intention with which it was

started; and so long as it is prosecuted with that intention the vessel is *in delicto* and liable to capture.

These cases are not less applicable because the captures were made *after* the vessels and cargoes had touched at the intermediate port. The same result follows if the capture be made *before* they reach the intermediate port, the intention to go beyond it being proved. The offence is completed by the overt act of starting with the guilty intention, and a capture made at any stage of the whole voyage whilst that intention continues is valid. The only difference is that the intention is usually harder to prove when the vessel is taken before reaching the intermediate port than after she leaves it for the interdicted port.

The fact, therefore, that the Bermuda, when captured, was proceeding to Nassau with the intention of stopping there and proceeding thence to a blockaded port, if practicable, placed her *in delicto* and made the capture lawful.

2d. The next question is, does the fact that the intention with which she was sailing when captured, to proceed beyond Nassau to the blockaded port, was not a fixed and absolute intention, but dependent on the decision of John Fraser & Co. when she reached Nassau, exempt her from liability to capture? In other words, does the sailing with a contingent and possible intention to break the blockade, not reduced to certainty at the time of capture, place the vessel *in delicto?*

It is not necessary to her condemnation that she should have been proceeding to the port of immediate destination with a *fixed* and *absolute* intention of going thence to the blockaded port as her ultimate destination. It is enough that her purpose of breaking the blockade was a *shifting* and *eventual* one, to be executed or abandoned as circumstances to be ascertained at Nassau should suggest. This point has been expressly decided in the case of *The Richmond*. (5 Rob., 325.)

The Richmond was an American ship, seized at St. Helena and proceeded against on the ground that she was going under a false destination to the Isle of France with articles contraband, and with a view of there selling the ship, which was adapted for a ship-of-war or for privateering. The formal papers expressed a destination to the Isle of France, but the master stated that there was no original intention of going to that port, and that the vessel sailed on a destination to St. Helena, and from thence to Mozambique, on the coast of Africa, for slaves, and that as a clearance could not be obtained to Mozambique, the Isle of France was put in for convenience, which statement other papers found on board agreed with. At the time of seizure, however, the vessel had cleared from St. Helena to the Isle of France, and she had unmoored to proceed to that place, but at what time that intention was taken up did not appear. Sir William Scott, after stating the facts, said: "Connecting these circumstances together, &c., it is difficult not to consider the Isle of France as the possible port of destination of this vessel, according to the original intention. I say as the possible port at least, if not the principal and absolute port of destination of the original voyage. It cannot be denied, undoubtedly, that an American ship might go to St. Helena, and from thence to the Isle of France, or any other port of the enemy, provided the cargo was of an innocent nature. If, on the contrary, the cargo was of a noxious character, the circumstance of merely touching at an English port would not alter the nature of a voyage in itself illegal." Having shown that the cargo was contraband, he proceeds: "The second question which arises from this statement of facts is, whether the seizure was made at a time when the intention of going to the Isle of France was sufficiently carried into execution? If there was any original design of going to the Isle of France, it is clear that the master had already completed

part of the voyage, and that the vessel was actually unmoored in further prosecution of it when the seizure was made." * * * "But supposing that it (the destination) was only of a *shifting* nature, and that it was *merely eventual*, that in law would be quite sufficient, and that, at least, must be taken to have been the design of the parties." * * * "If the intention was no more than this, 'I will go and sell pitch and tar at St. Helena if I can; and if I cannot, I will go on with them to the Isle of France and sell them there,' *that is an unlawful purpose, and every step taken in the prosecution of such a design is an unlawful act.* The interposition of an English port would not make it innocent" (5 Rob., 336.)

Although this vessel had actually cleared from St. Helena to the Isle of France, and unmoored to proceed on her voyage thereto, that fact is only referred to as evidence of the intention to go to that place, and in no respect affects the principle on which Sir William Scott condemned her.

Whether, therefore, the Bermuda, when captured, was sailing to Nassau under a fixed and unalterable purpose, after touching at that port, to proceed therefrom to a blockaded port, or whether that purpose at that time was made dependent on events to be afterwards unfolded, and was thus only a contingent purpose to run the blockade, her guilt was complete. The belligerent right of capture in either case attached to and travelled with her from the moment she sailed under the inspiration of that purpose. The right of capturing a vessel going to a blockaded port grows out of the necessity of protecting the blockade from violation. This involves the right to arrest her voyage, pursued with that intent, at any stage of it. If a vessel may make her way across the ocean to a neutral port, convenient to the blockaded port, under the shelter of a pretended destination to the neutral port, but with either an absolute or a contingent and alternative purpose of

making the blockaded port therefrom, she has accomplished much the greater part of her guilty voyage with impunity. If this be the law, the belligerent right of capture to preserve the integrity of a blockade is essentially crippled, and the blockade itself, in many cases, rendered ineffective.

And it is precisely this question, so vitally important to the efficiency and value of the blockade of the southern ports and to the interests and rights of our country, which is now presented, for the first time, to this court.

(Upon the whole question of intention to break blockade in this case, see the learned and able opinions of Judge Betts in *The Stephen Hart*, pamph. ed., 1863, page 21; *The Springbok*, pamph. ed., page 25; and Judge Marvin in *The Dolphin* and *The Pearl*, Appendix to opinion of Judge Betts in *The Peterhoff*, pamph. ed., 1863.)

The application of steam to the uses of ocean transportation, whilst it has increased the facilities for blockading particular ports, has also immensely increased the facilities and consequently lessened the risks of blockade-running, particularly where that blockade assumes to interdict the commerce of a coast line extending for thousands of miles. If a blockade-running steamer, carefully selected for its special fitness for the business, can manage to reach the blockaded coast without detection or hindrance, the chances of finding some obscure inlet, or, if discovered, of even out-running our cruisers in the short chase into the desired haven, are greatly in her favor. Hence this government has found it necessary to enlarge the cruising grounds of its naval vessels, and to watch for blockade-runners not only on the coast, but on the usual highways of ocean commerce. And there, where these adventurous law-breakers are deprived of the advantages of shallow waters and intricate inlets and entrances, our cruisers have been able most effectively to pursue and capture them. But

in order to protect themselves from this danger, the blockade-runners, soon after the blockade was enforced, adopted the device of clearing their vessels from European ports to the Bermuda, Bahama, and West India islands, and making pretended voyages to neutral ports on those islands most convenient to the blockaded ports of real destination, and to that extent claiming the protection extended to neutral commerce. With the ready aid of agents at those islands a brisk commerce suddenly sprang up between Liverpool and certain blockaded ports, in which the island ports were intermediate stopping places, the vessels engaged in this trade being innocent neutrals between Liverpool and the islands, and blockade-runners between the islands and the southern ports. Bermuda and Nassau became the intermediate ports for Charleston and Wilmington, and Havana and Cardenas for the Gulf ports. For a time Matamoras also became a port of frequent destination, both from Europe and the West Indies.

By this device the blockade-runners believed they had reduced the distance and, consequently, the risks of their illicit trade to the space between the islands and the blockaded ports; that having avoided the danger of capture between Europe and the islands by their assumed neutral cover, it was only necessary to await a favorable opportunity to make the run therefrom to the most convenient blockaded port, and, under cover of night or fog, get within its harbor before our outlying cruisers could follow.

Whether this device is to receive the sanction and protection of law is now the question before this court. If the pretence of a neutral trade from Liverpool to the islands be but a fiction to hide the fact of trade to the blockaded ports, it is believed that this court, in the language of Sir Wm. Grant in *The William*, "will give to the transaction its character and denomination, according to the truth and not according to the

fiction." And if the court shall be convinced that the *intention* is, not honest neutral trade to the islands, but illicit trade to the blockaded ports as the place of original ultimate destination, either absolute or contingent, we ask that they will maintain the validity of captures made whilst that intention still disguises itself with a neutral garb.

In this case the court can reach no other conclusion, because the claimants have not chosen to relieve themselves from the strong suspicions of an intention to run the blockade which the facts already adverted to raise against them. The means of explaining these facts, if they are innocent, rest with them, not with the captors, and their failure to make that explanation establishes a strong presumption of guilt; and this presumption is made conclusive by the fact that the master, under instructions, caused some of the ship's papers to be destroyed at the moment of capture.

The court must, therefore, conclude that the Bermuda was captured whilst on her way to break the blockade of one of the ports then blockaded by the authority of the United States, and was, for this reason, good prize.

3d. But conceding, still further, that John Fraser & Co. had decided, before the capture, that the Bermuda should go only to Nassau, and there transship her cargo to other vessels, to be carried on by those vessels to the blockaded port, she was still good prize when captured, because, at that time, she was engaged in carrying a cargo destined for a blockaded port, with full knowledge of that destination, and with no other purpose than to transport that cargo as far on its way as Nassau, in order that it might there be forwarded, by other means, to its ultimate place of delivery, the blockaded port.

If it were true, as alleged by the claimants, that she would have ended her voyage with that cargo at Nassau, she was still an agent of those who controlled her and her cargo in the

prosecution of the business of blockade-running. For the commercial destination of the cargo was the blockaded port, and not Nassau, and her office was only to carry the cargo that far on its way, and there transship it to other vessels for further progress. She was not, therefore, engaged in a voyage having a *commercial destination* to a neutral port. Her cargo was not destined to, and *could not have been delivered* at, that port. Nor would it, if even landed and warehoused there, have entered into or become "part of the common stock" of the island of New Providence. And this is the test by which an importation into a country in good faith, as the end and object of a voyage, is ascertained and determined, as was held by Sir Wm. Grant in *The William*, and by Sir Wm. Scott in *The Maria*, *The Thomyris*, &c.

All trade with the blockaded port is unlawful, and an actual sailing with intent to evade or break the blockade being itself, from the moment of sailing, a breach of the blockade, the belligerent right of capture instantly attaches. If, therefore, *the cargo* be on its way to the blockaded port, it may be captured at any point on the way. But if the cargo be liable to capture at any preliminary point, why shall not *the vessel*, which, at the time of capture, is its vehicle of transportation, be also liable to capture? Certainly it is then equally guilty with the cargo, for it is directly engaged in its service in the unlawful work. It is a principal in the crime, not an accessory before the fact, for the crime is complete at the time the vessel is transporting the cargo. If captured then, why should it escape the fate to which the law condemns the cargo? If it be said that it is to be distinguished from the cargo, because, unlike the cargo, its destination is not the blockaded port, the answer is that the difference of destination makes no difference in actual guilt; that guilt consists in the overt act of proceeding towards the blockaded port with

the fraudulent intent to carry on commercial intercourse with that port, and the offence is complete when the vessel starts on that enterprise. But commercial intercourse with the port is carried on, not by the mere entry of a ship into the port, but by the entry of the cargo which it is the object of the ship to transport. The voyage of the ship is only the *means* of commercial intercourse; the reception and use of the cargo its *end*. The ship, therefore, which carries a cargo on part of its direct way to a blockaded port, with the intention of aiding its delivery at that port, is, whilst in the act of carrying it, as much engaged in the interdicted commercial intercourse as is the ship to which it delivers the cargo, and by which it is to be carried into the blockaded port; and if captured in the act, the ship must take the fate of the cargo. Either this is true, or the vessel captured under such circumstances must be held to have been taken on an honest voyage with a cargo *commercially destined* to a neutral port, which was not the fact.

The far-reaching operation of the right of the blockading belligerent to vindicate the integrity of the blockade by capture is strikingly illustrated by the rule already suggested, that a vessel and cargo may be taken from the moment they start on the blockade-breaking voyage. But it is also illustrated by the rule that a cargo which has come out of the blockaded port to a non-blockaded port, and is then taken on board a vessel for transportation to a neutral country, may be captured on the voyage to that country and condemned for the previous breach. To this effect was the declaration of Sir Wm. Scott in *The Maria*. (6 Rob., 201.) That was the case, decided in 1805, of a cargo sent from Bremen—a port on the Weser, which river was then blockaded—in lighters, to the Jahde, for the purpose of being shipped for America under a charter-party made at Bremen. The cargo was transshipped on to the Maria at Varel *after* it had run the blockade, and was cap-

tured in the North sea. Sir William Scott said: "It cannot be doubted, on general principles, that these goods would be subject to condemnation as having been conveyed through the Weser. * * * That they were brought through the mouth of the blockaded river for the purpose of being shipped for exportation would subject them to be considered as taken on a continued voyage, and as liable to all the same principles that are applied to a direct voyage, of which the *terminus a quo* and the *terminus ad quem* are precisely the same as those of the more circuitous destination. If therefore, nothing had passed between the government of this country and the city of Bremen, it appears to me that these goods would be subject to condemnation." But he decreed restitution on payment of captor's expenses, because of certain negotiations that had occurred between the British government and the city of Bremen, which relieved the case from the operation of the general rule of law.

Although Sir William Scott, in *The Maria*, referred only to the goods as subject to condemnation, yet in the next year, November, 1806, in a similar case, *The Charlotte Sophia*, both *vessel* and cargo were condemned *on the same principle*. The cargo was sent on lighters from Hamburg, the blockaded port, to Tonningen, and there shipped on the Charlotte Sophia, which sailed to Algesiras, on which voyage she was captured. The goods were shipped under a charter-party with the ship, proceeding in ballast from Hamburg. (6 Rob., 204, note 1.)

This case decides that where a cargo breaks blockade with intent afterwards to load at another port for a voyage which would be lawful from that port if originating there, and, having loaded at that port and proceeded on the voyage, *both ship and cargo* are subject to condemnation for the offence of the cargo in breaking the blockade. It shows that a vessel is

liable to condemnation for complicity with a cargo which has violated the blockade, even though the vessel itself has not done so. The vessel shared the guilt of the cargo, because of its contract to aid the blockade-running venture of the cargo after the cargo had committed the offence.

By parity of reasoning, a vessel which carries a cargo towards a blockaded port with intent to assist the cargo in breaking the blockade should be condemned, though she is not herself to enter the blockaded port. The principle applicable to both cases is precisely the same; and it is, that the vessel partakes of the guilt of the cargo and shares its fate by the assistance it renders in the breach of blockade committed by the cargo. If any difference exist in the degree of guilt which attaches to a ship carrying a cargo away from a blockaded port and one carrying a cargo towards such a port, the latter should be held to the more stringent account, because it leads to and encourages the offence, whereas the former only aids it after it has been committed.

That this principle has the well-considered approval of the executive branch of our government is shown by the instructions of the Navy Department of 18th of August, 1862, to cruisers enforcing the blockade. After other directions as to the chase and visitation of suspected vessels, the circular proceeds: "Third, that when that visit is made the vessel is not then to be seized without a search carefully made, so far as to render it reasonable to believe that she is engaged in carrying contraband of war for or to the insurgents and to their ports directly, *or indirectly by transshipment, or otherwise violating the blockade.*" See Circular, Upton's Prize, 3d ed., 450.

This court is, then, asked to hold that the Bermuda was taken while engaged in blockade-running service, and is therefore good prize, whether she was to have proceeded from Nassau to the interdicted port, or to have there awaited John

Fraser & Co.'s decision upon her further movements; or whether it had already been determined that she should there transship her cargo to other vessels for further progress on its unlawful way.

Of course, on the same principles, the munitions of war, being destined for the blockaded port, were rightly condemned.

III. CONTRABAND OF WAR.

The only portion of the cargo yet condemned by the district court consists of the munitions of war. Whatever may be the predicament of the rest of the cargo, this court has now to do only with that portion condemned which is claimed by Fraser, Trenholm & Co., and Alexander T. Blakely, the appellants.

The portion claimed by Blakely, consisting of large guns and ammunition, is specifically set forth in the schedule annexed to his affidavit of claim. (Rec., p. 135.)

Fraser, Trenholm & Co., being the only other appellants on behalf of the condemned portion of the cargo, are to be accepted, in this court, as its owners, no other claimant appearing, and nothing being disclosed to show any other ownership.

1st. In so far as the condemned portion of the cargo is owned by Fraser, Trenholm & Co., its condemnation is defensible irrespective of all other questions, on the ground that it was enemy property, being property shipped by the Liverpool branch to the principal house at Charleston, owned by the firms in their relation as partners, and employed in commercial venture for the benefit of the partnership by consignment to the Charleston house, into whose possession, and under whose control, it had come at the time of capture. On the principles already stated, as applicable to the vessel if

owned by these firms, or any of the members thereof, the decree, so far as it condemns cargo owned by them, must be affirmed.

2d. That *all* of the articles embraced in the decree of condemnation of part of the cargo are of the class called contraband of war, will not be questioned. They are munitions of war.

3d. The well-settled and universal rule of public law recognizes the right of belligerents to prohibit, by capture and confiscation, the trade between neutrals and the enemy belligerent, in articles contraband of war. (Wheat. El., pt. 4, ch. 3, sec. 24; 1 Kent, 135; Jacobson, 667; Hautefeuille, Des Nations Neutres, tit. 8, sec. 1; 3 Phillimore Int. Law, sec. 227.)

If, therefore, that portion of the cargo condemned, claimed by Blakely, was actually owned by him, a neutral subject of Great Britain, it was subject to confiscation, provided its destination, when captured, was any port of the rebellious States. On this ground, also, the rest of the condemned cargo claimed by Fraser, Trenholm & Co. was subject to confiscation.

We have already claimed that the ultimate destination of all the cargo was the rebellious States, whether that destination was to be reached in the Bermuda, or, by transshipment, in some other vessel. If there was any part of the cargo more certainly destined to those States than the rest, it was that portion specifically condemned as contraband of war. We have referred to the intrinsic evidence of that destination furnished by the stamps and other marks on portions of it, showing its preparation for rebel use.

But Mr. Blakely swears that he shipped his portion of the cargo in his own name, "for Bermuda in the first instance, the said steamer being bound for that port; but having been informed that the port of Nassau, New Providence, offered

better opportunities for sale, I (he) desired that my (his) said goods should be forwarded from Bermuda to Nassau; and I (he) wrote to Messrs. Adderly & Son, of Nassau, instructing them, upon the arrival of my (his) said goods there, to dispose of part thereof to the agent of the government of Hayti, and to sell the remainder to any persons willing to become purchasers, whether federals, confederates or others, according to the prices which they might respectively offer." He also swears that he intended part of the guns and ammunition for Hayti, and the rest for sale at Bermuda or Nassau, in the usual course of business, to any person willing to purchase the same. (Rec., p. 135.)

The two bills of lading, Nos. 37 and 38, (Rec., p. 69,) show that Captain Blakely shipped his guns and ammunition *for Bermuda*. When captured, they had, after lying at Bermuda for five weeks untouched, left that port and were proceeding to some other port. Not the slightest evidence is furnished by the ship's papers of any other commercial destination for his goods than that stated in the bills of lading. The ship's papers, therefore, show that these goods were shipped with *a false destination*. Captain Blakely tries by his affidavit to create the impression that he first shipped them to Bermuda, and *afterwards* learning that Nassau was a better market, desired them to be forwarded to that place for sale. Nothing found on the ship sustains his assertion; no letter or order to that effect is produced from any quarter; nor does the affidavit of Harris, of the firm of Adderly & Co., sustain it. (Rec., p. 122.) Harris swears that the ship was consigned to that firm "with a cargo of general merchandise" from Bermuda, with instructions that the cargo should be landed at Nassau, but, whilst he denies that the ship was to run the blockade, he is careful to say nothing of the destination of the cargo. Although his affidavit seems to have been taken for

that class which relates to the produce of the enemy country owned by a neutral.

In *The Vrow Anna Catharina*, one of these cases, (5 Rob., 161,) Sir William Scott said: "It cannot be doubted that there are transactions so radically and fundamentally national as to impress the national character, independent of peace or war, or the local residence of the parties." In *The Phœnix* (5 Rob., 21) he declared that nothing could be more decided and fixed by that court and the Supreme Court than that the possession of the soil impresses on the owner the character of the country, as far as the produce of his plantation therein is concerned, whatever his own local residence may be, because the produce of the hostile soil is to be considered as bearing a hostile character, being one of the greatest sources of national wealth, and therefore a legitimate prize. See also *Bentzon* vs. *Boyle*, (9 Cranch, 191.)

On the same broad ground rests the rule which impresses hostile character on the trade of a neutral with the enemy in those branches of commerce usually confined to the enemy's own subjects. *The Princessa*, (2 Rob., 49,) *The Anna Catharina*, (4 Rob., 107,) *Vrow Anna Catharina*, (5 Rob., 161.)

During the last war between the United States and Great Britain many attempts were made by English merchants, in their trade to the West Indies and elsewhere, to evade the danger of capture by our cruisers, by the fraudulent assumption of a neutral cover. Some of the cases which came before this court were in many respects singularly like the present case, and facts in which they most resemble it were then held to amount to evidence of actual enemy ownership.

The Fortuna, (3 Wheat., 236,) one of these cases, was documented as owned by a Russian (neutral) house who were the claimants. But she was placed under the absolute control of Bennet & Co., a British (enemy) house; was despatched

under the orders of that house to Havana, where she was loaded under the direction of an assumed agent of the Russian owners, and was then ostensibly cleared for Riga, but with orders to call at a British port and terminate her voyage under the orders of the same British house under whose auspices the adventure had originated and been conducted. This court said: 1st. That a general shade of suspicion was cast over the whole case by the concealment of material papers. 2d. That there was no evidence that the adventure was even undertaken under instructions from the Russian owners, everything being set in motion by the British house; to which the court added, "And although they affect to act in the capacity of agents of the Russian house, even the rules of the common law would constitute them principals in a case in which they cannot exhibit the authority under which they assume the character of agents." 3d. The agent who was sent out to control the ship and cargo, when he arrived at Havana, was the agent of the British house, not of the Russian owners. The court said there were many circumstances to maintain the suspicion that the vessel was British property; at least not owned as claimed: no charter-party, no original correspondence, nothing, in fact, but those formal papers which never fail to accompany fictitious as well as real transactions. The captain was without instructions from his supposed owners, submitting implicitly to the orders of Bennet & Co., the British house, in everything, and they assuming a control over the contract which he exhibits with his supposed owner in Riga, and expressing solicitude about his expenses which could only have been suggested by consciousness that they would have to pay expenses.

If the name of Haigh be substituted for the Russian owners, and John Fraser & Co. and their Liverpool branch for Bennet & Co., the language of the court might be applied to the present

case with hardly a change of phraseology. If *The Fortuna* were, on the facts, of enemy ownership, it is hard to see how the Bermuda can be neutral property.

To the same effect are *The St. Nicholas* (1 Wheat., 417) and the cargo of *The ship Hazard*, (9 Cranch, 205.)

In the whole range of reported cases in which the impress of hostile character has been stamped upon property owned by neutrals, it will be hard to find one combining so many of the traits by which that character is recognized as the Bermuda exhibits. She was intended for enemy ownership, and devoted to enemy trade from the day of her completion, and never was engaged in any other. She and her cargo were as absolutely controlled by residents of the enemy country as if they owned her. She was commanded and officered and partly manned by enemies, and she was doing more to aid the enemy by blockade-running and other methods of conveying needed supplies than ever the Alabama did by piracy. She was the child of the rebellion, and knew no service but in its cause. If the zeal of her owner or owners, whether Haigh or Fraser & Co., in that cause, was stimulated by cupidity, that fact, as we have seen in *The Rendsborg*, so far from extenuating, aggravates her guilt and insures her condemnation. And even if the fact be (which we deny, and ask the court to disbelieve) that she was owned by a resident subject of Great Britain, it affords her no protection, since he chose to commit her to enemy control and enemy service, under circumstances which fully implicate him in her guilt.

II. LIABILITY TO CONDEMNATION FOR INTENDED BREACH OF BLOCKADE.

The voyage of the Bermuda was prosecuted for the purpose of effecting the delivery of her cargo at one of the blockaded ports, most probably Charleston. Conceding that, when cap-

tured, her immediate destination was Nassau, we affirm that it was not her *ultimate* destination, but that she was then sailing to that port with the intention, after touching there, of continuing her voyage to the blockaded port, as her port of *ultimate* destination, if it should be practicable to do so.

1st. Her Liverpool clearance, bills of lading, and papers not destroyed, declared Bermuda her *commercial destination*, and called for the delivery of her cargo at that island. But, having remained there five weeks without unlivery of cargo, she sailed therefrom with additional lading, under the orders of a Charleston house, with ostensible destination to Nassau. These facts prove that Bermuda was only a pretended destination, and suggest the suspicion that her real ultimate destination was concealed for some illicit purpose. (See also letter, Westendorff to Dunn, refusing to deliver government printing materials at Bermuda, page 86, and bill of lading, No. 5, page 53.)

Having passed her avowed destination, Bermuda, nothing indicated that Nassau was her destination, when captured, but the fact that she was sailing in that direction, under orders to report, on her arrival, to Adderly and Co. But this fact raises no presumption that it was her *ultimate* destination, and, if it did, that presumption is repelled and overthrown by the facts that *she had no bills of lading, letters of instructions, or any other papers which would have authorized the master to deliver her cargo or collect freight at that port.* She had nothing whatever to guide her course, or to justify the delivery of her cargo, but the will of Fraser & Co., at Charleston, whose orders to report to Adderly & Co., at Nassau, conferred no authority, and indicated no purpose to unload her at that port. (See letter April 1, 1862, Rec., p. 83; also letter of F., T. & Co. to Westendorff, Rec., p. 73.)

Such presumption of ultimate destination to Nassau is also repelled by the fact that she was proceeding to that port under

orders from the consignees resident and doing business, not in Nassau, but in Charleston, and proved to have been engaged in blockade-running, and by the further fact, well known to the court historically and judicially, that Nassau was then the port from which the business of blockade-running to Charleston, by ships from Liverpool and elsewhere, was most actively and successfully prosecuted.

2d. Her direction towards Nassau raising, then, no presumption of *ultimate* destination to that port, that destination must be ascertained from the character of her cargo and the evidence it affords of the market for which it was intended; from the general course of the trade of those who employed and controlled her; and from such other circumstances of the enterprise as throw light on the question.

3d. That her *cargo* was destined for the States in rebellion will hardly be questioned. We have already adverted, in detail, to the character of the cargo; its peculiar fitness for the southern market; the directions on many portions of it to persons and places in the rebellious States, and especially Charleston; the proof that other portions of it were shipped under the authority and for the use of the rebel government; the mottoes and devices on still other portions of it, both contraband and otherwise, appropriate to the rebel side of the present war; the letters which accompanied some of it, addressed to houses and persons in Charleston; and, finally, the large and expensive shipment of all kinds of goods contraband of war, especially munitions of war, so unusual in ordinary trade, so unfit for the port of Nassau for any domestic use, and so well suited for the market of the rebellion. These facts prove that it could not possibly have had any other destination, and, in the absence of clear evidence to the contrary, the strong presumption is that the destination of the cargo was also that of the ship.

4th. The evidence showing that the Bermuda was one of a number of vessels owned, controlled, and employed by the persons resident at Charleston and Liverpool, under the name of John Fraser & Co., and Fraser, Trenholm & Co., in the prosecution of their regular trade between those ports, has also been referred to in proof that she was actually owned by those persons. But the same evidence, taken in connexion with the fact that the Bermuda was captured on the usual route by which those firms prosecuted their trade between Liverpool and Charleston, (Bermuda and Nassau being regular intermediate stopping-places on that route,) with a cargo, as we have seen, shipped for Bermuda, but carried past that island by order of the Charleston firms and clearly destined for Charleston and other southern markets, and without any papers or other evidence to authorize, or indicate a purpose of, delivery at Nassau, raises a strong presumption that the ship was proceeding in the regular course of the trade of the firms from Liverpool to Charleston. It is proved that in the prosecution of that trade the Helen and the Economist, vessels owned or employed and controlled by them, sailed directly *from* Charleston to Liverpool, the latter being known to have stopped at Bermuda, and that the Herald, another vessel owned and controlled by them, started from Liverpool *for* Charleston, also stopping at Bermuda. In relation to all their vessels, including the Bermuda, they maintained a regular correspondence between Liverpool and Charleston, advising each other of the respective times of departure and arrival, with such other information as commercial partners at different ports usually communicate affecting their interests in the business conducted between those ports. And it is not proved that they had any house of business or regular agent at Nassau to whom their ships or cargoes were either generally or specially consigned, or by whom their ships

could have been unladen or reladen with return cargo for England or elsewhere on their account.

These facts give irresistible force to the presumption that the Bermuda, when captured, was proceeding in regular course of the trade of her owners or employers to Charleston.

5th. Many other circumstances surrounding the outfit and voyage of the vessel sustain and strengthen the presumption that her ultimate destination was Charleston.

The following are some of them :

6th. She had already been engaged in blockade-running, having just returned from such expedition under a certificate of sale to two persons in Charleston, one of whom was of the firm of Fraser, Trenholm & Co. (Rec., p. 132.) That voyage was intended to be for Charleston, but was diverted to Savannah by the blockade. (See affidavit of Haigh, Rec., p. 153.) That this voyage was under the auspices of Fraser, Trenholm & Co. is probable, not only from the existence of the certificate referred to, but from the fact that Tessier, who had commanded the Bermuda in the voyage, in writing soon after his return to Westendorff, his successor in command, referred to that firm as "*our owners.*"

7th. She was placed for this voyage in command of Westendorff, who, probably as well as any ship captain living, knew the difficult entrances to the harbor of Charleston ; and having just come out of that harbor, the difficulties of which had been increased by the "stone blockade," he was transferred from another ship of John Fraser & Co. to the Bermuda, the "certificate of competency" necessary to his appointment to command a British registered ship having been obtained through the interposition of Fraser, Trenholm & Co., on the 20th of December, 1861, before the Bermuda had returned from Savannah. (Rec., p. 74.) The first mate and

clerk (who was, not improbably, supercargo) lived in Charleston, and the second mate lived in New Orleans.

8th. Five of her six passengers found on board when she was captured lived in South Carolina, and all of them were avowedly proceeding to their homes in the south. They remained with her at Bermuda and re-embarked on her on their way home. If their object had been to go to Nassau for other means of reaching the south, it is not probable they would have remained in Bermuda so long, communication between that island and Nassau being frequent and unobstructed. These facts suggest the inference that they remained with the Bermuda because her purpose to run the blockade was fixed, but whether from Bermuda or Nassau was to be decided at Charleston.

9th. That Charleston or some other blockaded port was within the contemplation of Fraser, Trenholm & Co., from the commencement of the voyage, as a port of ultimate destination to be reached, if John Fraser & Co., when the ship arrived at Bermuda, thought it practicable to attempt it, is clearly shown by the letter of the former to the latter of 28th of February, 1862, sent out with the ship. (Rec., p. 79.) Fraser, Trenholm & Co. write as follows: "The letters we have written by this opportunity, with invoices and bills of lading of the cargo of the ship, are very full in every particular, and we think will greatly facilitate the delivery and *also the transshipment, should this be determined on.*" These words, of course, refer to the disposition of the cargo when the Bermuda had reached the *end* of her voyage. It is certain that the *delivery* of the cargo was to be made at a southern port, since the goods were intended for the southern market. These words, therefore, refer to the delivery of the cargo at a southern port; they could not have referred to its delivery at Bermuda or Nassau, for neither of those ports was *its* ultimate destina-

tion. If, therefore, the cargo was to be *delivered* from the Bermuda, that delivery was to take place when she reached her southern port of destination. But the possibility of *transshipment* was also contemplated as an alternative; this alternative was to be determined, either at Bermuda or at Nassau, by John Fraser & Co., in view of all the chances. But it was only an alternative, to be resorted to if found necessary to send forward the cargo to its final destination. That the transshipment of the cargo to another vessel is thus put as an alternative to be adopted or "determined upon," proves clearly the existence of an original and principal purpose to send the Bermuda herself to the ultimate destination of the cargo in a southern port, if it were found possible. Having been captured with her cargo on board, *beyond* Bermuda, her first port of destination where the alternative of transshipment was to be first decided, the presumption is that the other alternative of delivery from the Bermuda herself at the ultimate port of destination of the cargo, viz: a southern port, had been adopted; but whether adopted or not, it is clear that the intention to take that course, if found practicable, still existed.

That it was the original intention when the voyage commenced to send the cargo to a destination beyond Bermuda, its pretended destination, is proved by the last paragraph of this letter, which relates to *sending forward* (of course from Bermuda) the letters, invoices, and bills of lading. (Rec., p. 79.)

10th. That Captain Westendorff, when he left Charleston, was expected by his friends to return soon is shown by the memoranda of "Mrs. S. P. Kirkwood" and "M. D. S." (Rec., pp. 80, 81) for the purchase by Westendorff for them of articles of wearing apparel hard to obtain in a blockaded port. One is indorsed "Charleston," and the other expresses a hope that Captain W. may be brought "in safety back to his family, church and friends."

11th. The letter of G. B. Tennent (evidently of Charleston, and probably of the Charleston firm of Courtney, Tennent & Co.) to Westendorff, dated Sheffield, February 21, 1862, asking him to take over Thomas Walch, (whose name is on the crew-list and whose family live in Charleston,) (Rec., p. 39,) recognizes the alternative of the vessel stopping at Bermuda or going on to Charleston, according to circumstances; for Tennent suggests that Westendorff might assist Walch in getting a passage from Bermuda to Charleston, or (evidently in anticipation of his going on in Westendorff's ship) offers to pay his passage money from Bermuda to Charleston, *in Charleston*. (Rec., p. 76.)

12th. The false entries of the passengers as sailors, those who were on board at the capture being entered by disguised names, indicates a purpose to deceive; and these false entries were more likely to have deceived our cruisers than the British inspection officers.

13th. On the 22d of April, 1862, when the Bermuda was about to proceed to Nassau under orders through Butterfield, he wrote to Westendorff, "The money you require I will furnish, as before mentioned, charging 2½ per cent. for advancing, *and taking your draft on Messrs. Fraser, Trenholm & Co.*" (Rec., p. 87.)

If Nassau was then the ultimate commercial destination of the ship and port of delivery of the cargo, Butterfield, in the usual course of such business, would have suggested that Westendorff should draw on the *Nassau consignees* for expenses of the voyage, where its profits were to be realized, and not on the Liverpool shippers. The proposal to draw on Fraser, Trenholm & Co. suggests the inference that Butterfield considered that the profits of the voyage on delivery of cargo were to be realized by that house, as, of course, they would be through the principal house at Charleston, and, as a draft on

the Liverpool house was more available than one on the Charleston house, his suggestion naturally took that form.

14th. The shipping articles show that the projected voyage was of larger scope than from Liverpool to Bermuda or Nassau, and indicate a possible destination to ports or places in the United States before returning to the final port of discharge. They suggest the scheme of a voyage beyond the pretended port of commercial destination, and do not repel the presumption founded on other facts of ultimate destination to a blockaded port.

15th. The claimants allege that the owner of the vessel, Haigh, committed her to the management of Fraser, Trenholm & Co. for the voyage, without any written contract or charter-party. (See affidavit of Wise, Rec., p. 117; affidavit of Armstrong, Rec., p. 133.) The fact that Fraser, Trenholm & Co. and John Fraser & Co. had absolute control of the vessel and cargo, in a voyage the ultimate destination of which is not disclosed by any papers found on board, makes the absence of a charter-party or contract of affreightment (admitting Haigh to be the owner) a circumstance of suspicion, the force of which is much increased when the vessel is found in time of hostilities off the coast of one of the belligerents, and in the route of blockade-runners, with a cargo largely contraband of war.

16th. McHugh, a passenger on board, on his way to Savannah, and the representative of a portion of the cargo going to the house with which he was connected at that place, swears that he believes the ultimate destination of the cargo was to the southern States. (Rec., p. 25.) He does not allege that Nassau was the *ultimate* destination of the vessel.

The foregoing facts and inferences sustain the proposition that the Bermuda left Liverpool, first for the island of Bermuda, with a cargo ultimately destined for a blockaded port.

probably Charleston, with the intention of proceeding herself to the blockaded port of delivery, if, on her arrival at Bermuda, it should be deemed practicable by John Fraser & Co., to whom she was consigned, to attempt it. But if they should decide that it was not practicable to attempt it *with her*, then her cargo was to be "transshipped" at Bermuda to other vessels, called "tenders," of lighter draught and greater speed, which might, with less risk, brave the perils of blockade-running. At that time the obstructions placed in Charleston harbor, called the "stone fleet," had excited exaggerated apprehensions of the difficulties of entering that harbor. Accordingly, such vessels as the "Herald," a light-draught steamer "with average speed of 18½ knots an hour," were purchased and fitted out at Liverpool as "tenders" to the larger vessels which carried cargoes to that island. (See letter to Gray of 16th February, 1862, Rec., pp. 105, 107, and other evidence as to the Herald.) That the Herald was sent as a "tender" to the Bermuda, in case it should be decided to transship her cargo at Bermuda, is clearly proved.

The Bermuda reached Bermuda on the 19th of March. On the 1st of April Fraser & Co. ordered her, by the Economist, to proceed to Nassau, which order was received on the 19th or 20th and obeyed on the 23d, the vessel then starting for Nassau. Fraser & Co. had therefore decided not to terminate her voyage at Bermuda, her avowed commercial destination, by there transshipping her cargo to "tenders," but to send her forward another stage on the route to the *real* destination of her cargo. There is, as we have seen, no evidence to sustain the assumption that the order to proceed to Nassau was founded on any purpose to deliver or even transship the cargo at that port. It is evident that she was ordered there, as she had been sent to Bermuda, to obey the will of Fraser & Co., as yet unexpressed, and it is

equally evident that the question of proceeding beyond Nassau or of transshipping cargo there was yet undecided. Certainly nothing shows affirmatively a then existing purpose to deliver a cargo at Nassau which the facts show to have had a commercial destination to Bermuda and a real destination to Charleston, but no destination at all to Nassau. It was not, therefore, decided at the time of her capture that the Bermuda should end her voyage at Nassau.

Assuming, then, the existence, at the time of capture, of a purpose to run the blockade if it were found practicable when she reached Nassau, the first question is—

1st. Did the fact that, when captured, she was proceeding to the neutral port of Nassau as her immediate destination, with the intent to stop there as she had stopped at Bermuda, but of ultimately proceeding on her voyage to a blockaded port, if practicable, invalidate the capture?

We affirm that she was taken on a voyage from Liverpool (or Bermuda) to the blockaded port, and that her stoppage at Nassau would not have broken the continuity of that voyage. Nassau was only a stage of the voyage, not its end, and the guilty purpose then existing to proceed beyond it, if practicable, subjected her to capture just as she would have been subjected to capture after she had left Nassau for the blockaded port. The question is, what was the *intention* with which she was then sailing? If, as we think, that intention was to proceed to Nassau, there to take the chances, under orders from Charleston, of running the blockade, her guilt is as complete as if she had been taken entering Charleston harbor.

Having left Bermuda for Nassau with this guilty intention, the belligerent right of capture attached to and remained with her at every stage of her voyage. In the Columbia, (1 Rob., 154,) condemned with her cargo for sailing with intent to break the blockade of Amsterdam, Sir William Scott said

"It is said, also, that the vessel had not arrived, that the offence was not actually committed, but resided in intention only. On this point I am clearly of opinion that the sailing with intention of evading the blockade of the Texel was beginning to execute that intention, and is an overt act constituting the offence. *From that moment* the blockade is fraudulently invaded."—*The Vrow Joanna*, (2 Rob., 109;) *The Neptunus*, (*Ib.*, 115;) *Medeiros* vs. *Hill*, (8 Bing., 231;) *Yeaton* vs. *Fry*, (5 Cranch, 335;) *The Nereide*, (9 Cr., 440.) See also Halleck's Int. Law, 553, 554, and cases cited.

Unless, therefore, the intervention of an intermediate neutral port between the port of departure and the blockaded port operates to protect the voyage until the vessel reaches the intermediate neutral port, the liability to capture travels with her from the start. But the intervention of such neutral port will not so operate unless it be, in fact, the end of the voyage, and the place where the cargo is to enter into the common stock of the country. If the neutral port be not, in good faith, the terminus of the voyage, and the place where the cargo is to be delivered as its port of discharge and final delivery, even though the cargo be actually unshipped and afterwards reshipped on the vessel so as to give it the appearance of a new shipment and voyage from that port to the interdicted port, the continuity of the original voyage is not broken, and the vessel and cargo are *in delicto*. The courts have always judged such transactions by the *actual intention*, without regard to the fiction of colorable stoppage at the intermediate port. They have held that there is nothing in the fact of stopping at such port to divest the voyage of its real illicit character.

This principle has been frequently illustrated in a class of cases arising under British orders in council forbidding neutral vessels carrying cargoes from one enemy port to another.

In these cases neutral vessels have attempted to carry on the interdicted trade and escape its penalties by making colorable stoppages at intermediate neutral ports and proceeding thence, as on a new voyage, to the enemy port of destination, as if engaged in lawful neutral trade to that port. The decisions on this subject throw clear light on the principle that the voyage of a neutral vessel from a neutral to an interdicted enemy port as the port of ultimate destination is unlawful from the beginning, even though the intention be to deviate from the usual route between those ports and stop at another neutral port, so as to give the voyage the appearance of a voyage from one neutral port to another, and so protect the vessel and cargo from capture between the neutral ports. The principle on which these cases were decided is directly applicable to such a case, and fully justifies the capture of a vessel in the predicament just stated, before it has reached the intermediate neutral port.

In the *Maria*, (5 Rob., 365,) Sir William Scott reviewed some of the cases which presented the question of continuity of voyage between interdicted ports, where stoppage had been made at a neutral port, and he declared that "it is an inherent and settled principle in all cases in which the same question can have come under discussion, *that the mere touching at any port without importing the cargo into the common stock of the country will not alter the nature of the voyage, which continues the same in all respects, and must be considered as a voyage to the country to which the vessel is actually going for the purpose of delivering her cargo at the ultimate port.*" He states that this principle was affirmed in the court of appeal in the case of the *Essex*, an American vessel, which had taken a cargo of Spanish produce at Barcelona for Havana, under the direction of the agent in Europe, "that she should go to Havana, *first touching at Salem, in America*, where the

owner resided, who adopted the plan and sent the vessel on. It appeared clearly to the court that it was the intention originating in the mind of the agent, who acted under full powers, that the vessel should go to Havana, and that this purpose was adopted by the owner; that it was in reality a continued voyage from Spain to Havana. He also refers to the *Enoch*, in which there was the fact, conclusive of intention, of a charter-party providing "for a voyage to the colony of the enemy and back to America, and from thence to the mother country in Europe;" to the *Rowena*, in which the court inferred the intention of continuing the same voyage from such circumstances as the former habits of the vessel, that she had been for a considerable number of voyages employed in the same course of trade in the hands of the same owner. The whole cargo had come from the colony of the enemy, and had lain in America only a very short time, just long enough for the purpose of being landed and reshipped. Under these circumstances, the court felt bound to presume that the original intention of sending the cargo to Europe had actuated the whole adventure. (5 Rob., 370.)

The *William*, (5 Rob., 385,) a case before the lords commissioners of appeal, was an American vessel which had taken on board a cargo of cocoa, the property of the American owners, at Laguayra, which was brought to Marblehead, Massachusetts, and unladen. The ship was then cleaned and slightly repaired, and again took on board the chief part of her former cargo, with some sugars brought from Havana in other ships, which the owners had purchased, and she sailed on a destination to Bilboa, in Spain, on which she was captured, having stopped at Marblehead nine days. The orders in council, enforcing the rule of 1756, prohibited neutrals from direct trade between the hostile colony and its mother country, and, therefore, the claimants contended that the voyage to

the benefit of Haigh, it is not probable that he would have omitted so important a fact bearing on the destination of the ship as an order to sell the munitions of war at Nassau if Blakely had ever given such an order.

But if Blakely *did* write such a letter to Adderly & Co., it is strong evidence of fraudulent concert by him with the controllers of the ship, to create a false impression as to the destination of his munitions of war. He swears that in making his shipment to *Bermuda* he intended part of the goods for the government of Hayti, and he afterwards instructed Adderly & Son to sell part of them to the agent of the government of Hayti *at Nassau*. Will any sane man believe that Blakely could have supposed *Bermuda* a market for such goods for Hayti? Or, if Bermuda was such a market, that the government of Hayti could also have had an agent to purchase cannon and shell *at Nassau?* That either of these little islands had become a market to supply such a demand for Hayti passes human belief. The story is an absurd fiction which stamps the impress of fraud on the whole transaction.

Nor is his statement that he included "federals" in his pretended instructions to Adderly & Son any more probable. No man knew better than he that the United States did not go to Nassau to purchase Blakely guns manufactured in England.

In truth, Captain Blakely's part of the cargo was proceeding, when captured, with the ship and all the rest of the cargo, under the orders and control of John Fraser & Co., issued and exercised from Charleston. Nothing in the orders of that house of April 1, 1862, under which the ship was then on her way, shows that the control or destination of any part of the cargo was different from the rest of it. And it is incredible, on the whole testimony, that any such difference existed. It could all have had but one destination and one market, to-

wards which it was proceeding under the controlling orders of enemies who resided and did business there.

We assume it, then, as established, that the market destination of the contraband portion of the cargo, including that claimed by Blakely, and that claimed by Fraser, Trenholm & Co., was an enemy port. If so, it was good prize from the moment of its departure and at the time of capture. *The Imina*, (3 Rob., 168.) *The Trende Sostre*, (6 Rob., 390.)

4th. Apart from any question of the intention to transport the contraband portion of this cargo to a hostile port in the Bermuda, or to transship it at Nassau to some other vessel for that purpose, it was good prize at the time of its capture, *because it was then in actual enemy possession and under enemy control.*

The only known consignment of the cargo was to "John Fraser & Co., or their authorized agent, Hamilton, Bermuda," by Fraser, Trenholm & Co., by their letter of February 28, 1862. (Rec., p. 79.) By their letter of April 1, 1862, (Rec., pp. 83, 84,) written from Charleston, John Fraser & Co. assumed actual control of the ship and all its cargo, including, of course, its contraband part; and when captured, the ship was sailing under their orders, on the route by which trade with enemy ports was then most usually prosecuted.

Conceding it to have been owned by neutrals, the misconduct of the neutral owner in thus submitting it for the purposes of commerce to enemy possession and control, subjects it to confiscation. We have already seen, in considering the general destination of the cargo, that it having passed Bermuda, the place to which it was shipped, under the orders of the consignees, who resided and did business at Charleston, and there being no evidence of any commercial destination *beyond* Bermuda, and no known authority to deliver the cargo at Nassau, the presumption of law is that its destination was the place of

business of the consignees, Charleston, the only place where the master of the ship had legal authority to deliver it. But besides this legal presumption, founded on the ordinary and natural course of business, there is a strong presumption of fact that John Fraser & Co., having absolute control of the contraband cargo, would carry it to the place where they would find the best market for it, and where it would benefit the cause in which the evidence shows them to have been active agents. If the rebel secretary of war had been the consignee of these contraband articles, it is not more certain that they would have been controlled to reach the armies of the rebellion, than that John Fraser & Co. would have given them that direction. And that they were proceeding in that direction will hardly be questioned in the face of the historical diplomatic, and judicial evidence that trade to rebel ports on the Atlantic coast was prosecuted almost exclusively by way of Bermuda and Nassau.

If, therefore, Blakely or any other neutral owner of contraband goods, peculiarly adapted and greatly needed for enemy use, chose to commit them to the absolute possession and control of consignees resident in Charleston, in a vessel employed and controlled, if not owned, by those consignees, commanded by an enemy master, and proceeding on the route of the enemy trade, towards an enemy port, intermixed with a cargo, a large portion of which bore on its front the direct evidence of enemy destination, he must take the consequences in the loss of such goods when captured.

"It is necessary for a neutral, if he would escape the danger of these seizures, to be exceedingly circumspect in his whole voyage." (Hazlett and Roche, Law Mar. War, 264.) This necessity of circumspection on the part of neutrals in such cases is illustrated by *The Trende Sostre*, (6 Rob., 390,) where Sir Wm. Scott declared, "That a neutral was not at liberty to proceed

to an enemy port with articles of a contraband nature, under an intention of selling other innocent commodities only, and of proceeding with the contraband articles to a port of ulterior destination."

5th. There being no proprietary documents or other evidence to show in whom the actual ownership was vested at the time of capture, the condemned goods will be presumed, in a prize court, to have been owned by John Fraser & Co., the consignees, and, therefore, to be enemy property. The general rule in time of war is, that goods shipped to an enemy consignee, *as soon as shipped*, vest in the enemy consignee, and the captor has a right to seize and convert them to his own use; "For he, having all the rights that belong to his enemy, is authorized to have his taking possession considered as equivalent to an actual delivery to his enemy; and the shipper who put them on board during a time of war must be presumed to know the rule, and to secure himself, in his agreement with the consignee, against the contingence of any loss to himself that can arise from capture. In other words, he is a mere insurer against sea-risk, and he has nothing to do with the case of capture, the loss of which falls entirely on the consignee. If the consignee refuses payment, and throws it upon the shipper, the shipper must be supposed to have guarded his own interests against that hazard, or he has acted improvidently and without caution." (Sir Wm. Scott in *The Packet De Bilboa*, 2 Rob., 133.)

That these goods were in fact shipped to John Fraser & Co. cannot be doubted. By that fact of shipment they were subjected to the belligerent right of capture. But, before capture, they had actually, in pursuance of the shipment, come into their possession and control, as much as if they had reached their Charleston warehouse. *A fortiori*, they were subject to capture under the rule above stated, and if Blakely

or any other neutral claimant suffers loss, the remedy is against John Fraser & Co.

The presumption of title in John Fraser & Co., from the fact of shipment to and possession taken by them, is greatly strengthened by the destruction of papers by the master at the time of capture, under instructions from that house and its Liverpool branch.

6th. Assuming the ultimate destination of the contraband cargo to have been a blockaded port, it was good prize, both as contraband of war intended for enemy use and as property intended to break the blockade, whether the intention, at the time of capture, was, first, to touch at Nassau, and proceed thence, on the Bermuda, to the enemy port, or, second, to stop at Nassau, and there unload and transship it to another vessel for transportation to the enemy port. (As to liability of cargo for breach of blockade by ship, see Baltazzi *vs.* Rider, 12 Moore, 126.)

We have already shown that *the vessel* was good prize for intended breach of blockade on both these grounds, the proposition resting on the assumption that the destination of the cargo was a blockaded port, which, so far as the question concerns contraband cargo, is also the enemy port. Of course, if they be true, or either of them, the condemnation of the contraband cargo follows, and the argument need not be here repeated. We only add the following citation from Halleck, as to the effect of the interposition of a neutral port on the captured cargo, and the statement of the same principle by this court in *The Commercen*, as it affects contraband of war:

"The ulterior destination of the goods determines the character of the trade, no matter how circuitous the route by which they are to reach their destination. Even where the ship in which the goods are embarked *is destined to a neutral port, and the goods are to be there unladen*, yet, if they are to be

transported thence, whatever may be the mode of conveyance to an enemy's port or territory, they fall within the interdiction and penalty of the law." "It is an attempt to carry on a trade with the enemy by the circuitous route of a neutral port, and thus evade the penalty of the law. But the law will not countenance any such attempt to violate its principles by a resort to the shelter of neutral territory; any such voyage is illegal in its inception, and the goods shipped are liable to seizure at the instant it commences." (Halleck, Int. Law, chap. 21, sec. 11.)

The Commercen (1 Wheat., 382) was a neutral (Swedish) ship, captured on a voyage from Limerick, Ireland, to Bilboa, in Spain, a neutral country, with a cargo of barley and oats for the use of the British army in Spain. It having been argued that these goods were not contraband because their destination was to a neutral country, the court said: "It is certainly true that goods destined for the use of a neutral country can never be deemed contraband, whatever may be their character, or however well adapted for warlike purposes. But if such goods are destined for the direct and avowed use of the enemy's army or navy, we should be glad to see an authority which countenances this exemption from forfeiture, even though the property of a neutral. Suppose, in time of war, a British fleet were lying in a neutral port; would it be lawful for a neutral to carry provisions or munitions of war thither, avowedly for the exclusive supply of such fleet? * * * In such a case the goods, even if belonging to a neutral, would have had the taint of contraband in its most offensive character, on account of their destination, *and the mere interposition of a neutral port would not protect them from forfeiture.*" (See also 1 Kent's Com., 85.)

7th. Not only is all the contraband part of the cargo good

prize, but, under the circumstances of the case, the ship is involved in its guilt, and is also, on that ground, condemnable.

By the modern rule of law the ship is not ordinarily subject to condemnation for carrying contraband goods, although the ancient rule was more rigid, and it, according to Sir William Scott, was perfectly defensible on every principle of justice. But the present rule, which relieves the ship, is subject to exceptions. Where she belongs to the owner of the contraband cargo; or where she is carrying such cargo under a false destination or false papers; or where the owner charters her knowing that she is to be used for carrying such cargo for enemy use; or where there are facts indicating privity between the owner of the vessel and the owner of the cargo, or other malignant or aggravating circumstances, she must share the fate of the cargo. *The Neutralitet*, (3 Rob., 296,) where the owner chartered the ship for contraband trade. *The Franklin*, (3 Rob., 217,) where the ship was carrying contraband, with a false destination, and where Sir William Scott said that the relaxation of the ancient rule, which condemned the ship with the cargo, can only be claimed by *fair* cases. *The Jonge Margaretha*, (1 Rob., 189;) *The Mercurius*, (1 Rob., 288, and note;) *The Jonge Tobias*, (1 Rob., 329;) *The Sarah Christina*, (1 Rob., 238;) *The Neptunus*, (3 Rob., 108;) *The Eenrom*, (2 Rob., 1;) *The Edward*, (4 Rob., 68;) *The Ranger*, (6 Rob., 126,) where the court said: "If the owner [of the ship] will place his property under the absolute management and control of persons who are *capable* of lending it to be made an instrument of fraud in the hands of the enemy, he must sustain the consequences of such misconduct on the part of his agent." *The Baltic*, (1 Acton, 25,) where the ship was condemned because "the owner must have been aware of the fraud intended, if not a confidential party to it." *The Oster Roser*, (4 Rob., 200;) *The Carolina*, (4 Rob., 260;) *The Richmond*,

(5 Rob., 325;) *The Charlotte*, (5 Rob., 275;) *The Ringende Jacob*, (1 Rob., 89;) Carrington *vs.* Merch. Ins. Co., 8 Pet. 520.

If the members of the houses of John Fraser & Co. and Fraser, Trenholm & Co., who are the appealing claimants, and, so far as is known in the case, owners of part of the condemned munitions of war, are also owners of the ship, she must be condemned with their contraband cargo.

But whether they were the owners of the ship or not, the absolute control which they had over her, under some arrangement with the alleged owner by which he committed her to their exclusive possession and use in the carriage of their contraband cargo destined for enemy use, stamps her with the guilt of that cargo, and subjects her to its fate.

Under the authorities cited, if the alleged owner, when he handed her over to the unlimited control of Fraser, Trenholm & Co., (without written contract,) *knew* that they intended to use her in carrying contraband for enemy use, his ship is condemnable.

That he knew the purposes to which she was to be applied by them, seems too plain for argument. He had sent her to Charleston, on her preceding voyage, for sale, he says, under a power of attorney to one or more of the members of that house, resident in Charleston. He therefore knew he was committing her to the control of enemies, and was bound to know that in a trade destined for an enemy port they would make illicit shipments. He also knew that she was commanded by an enemy master. It is absurd to pretend that he could have been ignorant of the character or destination of her cargo. In February, 1862, all Liverpool rang with stories of the "large rifled cannon" and "large lots of ammunition and materials of war" his ship was "taking in." (Rec., p. 106.) He was at that time, he swears, the owner of 340 bags of coffee shipped as part of her

cargo by Bushby & Co. for his "sole account and risk," "with the intention of being discharged at Bermuda and Nassau," (Rec., p. 147,) though shipped only for Bermuda. And it may be added, that it is significant of his knowledge of the destination of ship and cargo, that although the bill of lading of this coffee discloses the name of no consignee, and although he says an invoice of it was sent forward by the ship, which was destroyed at the time of capture, he does not disclose to whom it was consigned, by whom it was to be sold or accounted for, or where it was to be sold. The whole world knew that his ship was one of the line by which the two firms at Liverpool and Charleston prosecuted their regular trade between those ports, and which, then and since, was the chief dependence of the enemy for foreign supplies, and to impute to him ignorance of these facts would be more than his counsel will ask. As Sir William Scott said, in *The Baltic*, he "must have been aware of the fraud intended, if not a confidential party to it;" and if he was not, he ought not, as was said in *The Ranger*, to have "placed his property under the absolute management and control of persons capable of lending it to be made an instrument of fraud in the hands of the enemy."

He must be presumed to have fully known of the shipments of contraband by both Fraser, Trenholm & Co., and Blakely, and of their destination and use, and his vessel is, on that ground, condemnable.

It is also condemnable for the reason that, when captured, it was carrying contraband goods which had been shipped to Bermuda, to some port *beyond* Bermuda, and therefore under *a false destination*.

IV. DESTRUCTION OF SHIP'S PAPERS

Upon the several grounds—1st, of enemy ownership of vessel and contraband cargo, or of exclusive and absolute possession, control, and use by enemies in enemy commerce, whereby a hostile character was impressed on ship and contraband cargo, irrespective of actual ownership; 2d, of destination of ship and cargo to a blockaded port; and, 3d, of contraband cargo, destined for enemy use, under circumstances affecting the ship with its guilt and consequent liability—the ship and contraband cargo were rightly condemned by the district court, and the claimants were not entitled to make further proof.

"Further proof," said Sir Wm. Scott, in *The Welvaart*, (1 Rob., 125,) "is the privilege of honest ignorance, or honest negligence to neutrals who have not violated the law of neutrality." In the class of cases of which this is one, where the vessel, though claimed by a neutral owner, had been left in enemy possession, control, and commerce, further proof was refused. *The Vigilantia*, (6 Rob., 123;) *The Jemmy*, (4 Rob., 31.)

Where gross misconduct is proved against the persons claiming an interest in the property, further proof is never allowed; *The Vrow Hermina*, (1 Rob., 165;) nor where, on the face of the cause, as first presented, there appears *mala fides* on part of the claimant; *The Juffrouw Anna*, (Ibid., 126;) *The Eenrom*, (2 Rob., 15;) nor where a party was detected covering enemy property under false appearances; *The Zulema*, (1 Acton, 17;) nor where the ship or cargo was proceeding under a false destination; *The Carolina*, (3 Rob., 75.) And see also, for cases of fraud which excluded further proof, *The Argo*, (1 Rob., 159;) *The Calypso*, (2 Rob., 154.)

But a leading and familiar ground for the exclusion of fur-

ther proof directly applicable to this case is the destruction of papers. It is true that the courts have said, in general terms, that, standing by itself, spoliation of papers is not a cause for condemnation, but it may, we think, be safely said, on the authorities, that a spoliation of proprietary papers, such as occurred in this case, will, under the circumstances, be ground for excluding further proof, and consequently operate to condemn ship and cargo.

The rule is thus stated by Sir Wm. Scott in *The Hunter*, (1 Dodson, 480–486:) "It is certain that, by the law of every maritime court of Europe, spoliation of papers not only excludes further proof, but does, *per se*, infer condemnation, founding a presumption *juris et de jure* that it was done for the purpose of fraudulently suppressing evidence, which, if produced, would lead to the same result; and this surely not without reason, although the lenity of our code has not adopted the rule in its full rigor, but has modified it to this extent, that, *if all other circumstances are clear*, this circumstance alone shall not be damnatory, particularly if the act was done by a person who has interests of his own that might be benefited by the commission of this injurious act. But, though it does not found an absolute presumption *juris et de jure*, it only stops short of that, for it certainly generates a most unfavorable presumption. A case that escapes with such a brand upon it is only saved so as by fire. There must be that overwhelming proof arising from the concurrence of every other circumstance in its favor, that forces the conviction of its truth in spite of the powerful impression such an act makes to its entire reprobation." In *The Rising Sun*, (2 Rob., 104–106,) he says: "Spoliation is not alone, in our courts of admiralty, a cause of condemnation; but, *if other circumstances occur to raise suspicion*, it is not too much to say of a spoliation of papers that the person

guilty of that act shall not have the aid of the court, or be permitted to give further proof, if further proof is necessary."

Although spoliation of papers is thus held to be not, *per se*, ground of condemnation, it yet raises a presumption that it was committed in order to destroy evidence which, if produced, would have insured condemnation; and unless the party guilty of the spoliation can remove that presumption by prompt and frank explanation, which accounts for the spoliation on some other hypothesis, consistent with good faith and innocence, the presumption will operate against him. If the case labor under heavy suspicions, or if there be vehement presumption of bad faith, or gross prevarication, "it is," as this court has said, "ground for the denial of further proof, and condemnation ensues from the defects in the evidence which the party is not permitted to supply." *The Pizarro*, (2 Wheat., 227.) *Bernardi* vs. *Motteux*, (2 Doug., 554–559–560.)

Where the master of a ship had destroyed papers which he alleged were only private letters, Sir Wm. Scott said: "No rule can be better known than that neutral masters are not at liberty to destroy papers; or, if they do, that they will not be permitted to explain away such suppression by saying that they were only private letters. In all such cases it must be considered as proof of *mala fides*; and when that appears, it is a universal rule to presume the worst against those who are convicted of it. It will always be supposed that such letters relate to the ship or cargo, and that it was of material consequence to some interests that they should be destroyed." *The Two Brothers*, (1 Rob., 131.)

If the reason of the destruction of the Bermuda's papers were at all doubtful, and susceptible of any explanation which would remove the presumption that they were destroyed to put out of the way evidence which would have convicted her, still, under these authorities, the heavy suspicions which the

testimony raises as to her character and destination, and the absence of full and frank explanation, would make that presumption conclusive.

But the evidence leaves no doubt whatever of the purpose with which the ship's papers were destroyed. They were destroyed by the master, *under the instructions of his employers*, who controlled, if they did not own, the ship and cargo as "the most certain means of preventing any of them falling into improper hands;" that is, to prevent them from falling into the hands of one of our cruisers and being used as evidence of the character and destination of ship and cargo. The purpose of the destruction is not here a presumption open to explanation, but matter of clear and conclusive *proof*. To allow an explanation of it by further proof, if it were asked for, would simply be to encourage such destruction, and open the door to boundless perjury. The privilege of explanation given by the relaxed rule of England and the United States, by which a party may remove the presumption of guilt arising from the destruction of papers, does not apply to a case like this at all, for the guilty purpose in their destruction is not presumed, but proved.

The fact of the spoliation of the ship's papers, which were *proprietary papers*, furnishing evidence of either the ownership or destination of the ship and cargo, perhaps both, for the purpose of destroying the evidence of ownership or destination, or both, raises, then, a conclusive presumption against the claimants that the destroyed papers would have shown—1st, the hostile character of ship and cargo; 2d, the destination of ship and cargo to a blockaded port; and 3d, that the contraband cargo was destined for enemy use with the connivance of if it was not owned by, the owner of the vessel. For the law, *in odium spoliatoris*, will presume that the suppressed papers would have sustained all the facts of guilt which the

other papers and evidence tend to establish against the ship and cargo.

The spoliation being the act of the master, affects the owner of the ship as much as if it were committed by himself. *The Vrow Judith*, (1 Rob., 151.) And this whether the owner were himself guilty or innocent. United States *vs.* Brig Malek Adhel, (2 How., 233, 234.) And although, in general, the act of the master will not bind the owner of the cargo, if innocent, still, the suppression or fraudulent destruction of papers by the master is an exception to this rule, and affects the owner of the cargo. (Abbott on Shipping, 169, and cases cited.)

The presumption of guilt from this act, therefore, reaches both ship and cargo in every aspect of the case, and justifies the decree of the court below.

V. FORMER BREACH OF BLOCKADE.

When captured, the Bermuda was sailing on the voyage next succeeding that in which she had broken the blockade of the port of Savannah. In August, 1861, Haigh states that he sent her on a voyage to Charleston. She entered the blockaded port of Savannah, (Rec., pp. 153, 154,) and returned from there, again breaking the blockade, in the winter of 1861–'62, reaching Liverpool in January, 1862. Her next voyage was that on which she was taken.

In *The Christiansberg*, (6 Rob., 375,) the ship was blockaded in the port of Rotterdam, but an order in council directed that the restriction on the trade of that port should not be applied to vessels going therefrom to a neutral port. The Christiansberg came out of Rotterdam under the benefit of this indulgence, with ostensible destination to Smyrna, a neutral port, but without any intention of going there, and went to Alicant, an enemy port. At Alicant she sold her

cargo, took on board another cargo, with which she sailed to Copenhagen, and was captured on that voyage. Sir William Scott condemned the vessel on the ground that it was not till she came out of Alicant again that any opportunity was afforded of vindicating the law and enforcing the restriction of the order. He said, in principle, the penalty might not unjustly be pursued further than to the immediately subsequent voyage, but in practice it has not been carried further than to the voyage succeeding, which affords the first opportunity of enforcing the law. He also on this ground condemned the cargo. See, also, *Parkman* vs. *Allen*, (1 Stair's Decis., 529,) and *The Randers Bye*, in note to Christianasberg, (6 Rob., 381, 382.)

On this principle the Bermuda was, when captured, still subject to the penalty for her former offence of blockade breaking, although we do not contend that this penalty extended to her cargo.

Judge Betts, at New York, made this a ground of condemnation of the *Mersey*, the *Major Barbour*, and the *Joseph H. Toone*. (Upton's Mar. War and Prize, 288, 291, 3d edition.)

VI. CLAIM OF IMMUNITY FROM CAPTURE AS WITHIN NEUTRAL TERRITORIAL JURISDICTION.

The appellants allege: 1st. That the capture was made four and a quarter miles from the shore of Great Abaco island, an English colony, and that it was consequently made within the range of modern cannon shot from shore. 2d. That it was made within a space embraced by a line drawn due south from the nearest headland on Abaco island, above the place of capture; and 3d. That it was made, not in the open sea, but in waters constituting channels belonging to Great Britain.

and that for these three reasons the capture was made within the territorial jurisdiction of a neutral power, and is invalid.

1st. Nothing in the printed Record sustains the assertion that the capture was made four and a quarter miles from shore. Captain Westendorff, in his affidavit, (Rec., p. 8,) says the capture was made about seven miles distant from Abaco light-house; and in his examination, (p. 10,) that it was made "at Abaco light-house, bearing SW. half S., distance about seven or eight miles." Lieutenant Abbott, prize-master, swears (p. 10) the prize was taken about fifteen miles northeast by east from Hole in the Wall. Reed, the mate, says (p. 13) about eight miles from Abaco light-house, and C. B. Westendorff, (p. 15,) and J. J. Pringle, (p. 19,) say seven or eight miles from the light-house. Huger (p. 17) and Sparkman (p. 18) say about seven miles off the light-house. Young Pringle says (p. 21) about seven or eight miles *from land*. Johnson, the second mate, (p. 30,) Craney, (p. 42,) and Richardson, (p. 51,) say six or seven miles *from land*. Curran says (p. 47) six or eight miles *from the land*, off a light-house, and Cassidy (p. 49) says five or six miles *from the land*. All the witnesses fix the distance from various points of land at from six to nine miles, most of them from seven to eight.

If these witnesses approach accuracy, there can be no question that the capture was made far beyond the possible range of cannon shot from shore, and, even conceding that to be the reach of territorial jurisdiction, outside British neutral waters.

But if we concede that the distance from the nearest point of land was four and a quarter miles, the capture was still valid; for no rule of public law is more firmly settled or more universally recognized than this, that the territorial jurisdiction of a country over the open waters of the adjacent ocean, not included within its ports, harbors, bays, &c., or enclosed by headlands, extends to one marine league from shore, and no further.

We concede that this distance was originally fixed, chiefly because it was supposed to represent the limits within which defence could be made from the shore by the instruments of war. But whatever may have been its foundation, we contend that the rule which limits the territorial jurisdiction of a country over the open sea which washes its shores, to a marine league or three miles, has been firmly established by the well settled custom of nations, by the decisions of international and municipal courts, by statutory enactments, by treaties and other diplomatic recognition, and by long and unbroken executive practice. Through these sanctions the rule has been incorporated into the law of nations, and has become one of the firm supports upon which the peace of the world rests, having now the practical force of a solemn *convention*. And we submit that this court ought not, at this day, even to consider the question of overthrowing it, even if it should appear that some experiments in the improvement of artillery, as yet without certain or satisfactory results, have succeeded in projecting a cannon ball more than three miles.

In view of the definite rule which modern usage and authority has established, the ancient learning on the subject is now more curious than useful. It will be enough to refer to the chapter of AZUNI on the extent of the territorial sea. (1 Mar. Law, 197–205) where, after citing the opinions of GROTIUS, (De Jure Bel. et Pac., lib. 2, cap. 3, sec. 13–14;) HUBNER, (Tom. 1, chap. 8, sec. 10;) VATTEL, (B. 1, ch. 23, p. 204:) BYNKERSHOEK (De Dom. Mar.,) and others, he says: "In this conflict of opposite opinions I adopt that of Gallian, before hinted at by Hubner and Vattel, and more positively expressed by Bynkershoek. It is the only one which appears to be equitable and adapted to the nature of things. In my view it is the most just and the only means that can serve as a rule to fix the extent of the territorial sea, always contested

and not yet decided, or at least not established *as it ought to be* on the basis of solemn treaty between maritime powers. *Until they shall enter into a convention on the subject, every thing must depend on arbitrary usage; and the strongest will give law to the weakest.*" After declaring that the most certain method of fixing the extent of territorial sea adjacent to coasts not curved is to limit to the space passed over by a ball shot from a cannon, or at the point at which a bomb thrown from a mortar placed on the shore may strike a vessel, he adds: "It would be reasonable, then, in my opinion, without inquiring whether the nation in possession of the territory has a castle or battery erected on the open sea, to determine *definitively* that the jurisdiction of the territorial sea shall extend *no further than three miles from the land*, which is, without dispute, the greatest distance to which the force of gunpowder can carry a ball or bomb." (Az. Mar. Law, vol. I, pp. 204–205.)

Azuni states that this distance (three miles) was adopted by the Empress of Russia in her instructions to her cruisers of December 13, 1787; by the Grand Duke of Tuscany, in his regulations of August 1, 1778; by the republic of Genoa, in its manifesto of July 1, 1779, and by the republic of Venice, in its manifesto of September 9, 1779.

It thus appears that before the close of the last century the rule of the marine league, advocated by the more modern writers against the extravagant claims of the earlier authors had been frequently sanctioned by the practice of European nations.

It was also received as settled law by the English prize courts.

In *The Twee Gebroeders*, (3 Rob., 162–336.) captured in July, 1799, in the Groningen Wat, bound from Hamburg to Amsterdam, then blockaded, a claim was made by the authority of the Prussian minister that the capture was invalid, because

made in Prussian territory. Sir William Scott said: "I am inclined to think, on an inspection of the charts, and on hearing what has been urged, that she was lying in the eastern branch of the Ems, within what may, I think, be considered as a distance of *three miles*, at most, from East Friesland."

In *The Vrow Anna Catharina*, (5 Rob., 51,) a ship and cargo documented as Dutch property, and captured on a voyage from Batavia to Amsterdam, near the island of St. Michael, a claim of territory was interposed by the Portuguese consul. Sir William Scott said:

"It is a point" (claim of territory) "on which foreign states are extremely liable to be misinformed and abused by the interested representations of those who are anxious to catch at their protection. The claim of territory is therefore to be taken as a matter *stricti juris*, and to be made out by clear and unimpeached evidence. * * * The *utmost extent* which is given to this immunity, even in books, is confined to about *three English miles*." Although this capture was made "at the distance of about one English league" from St. Michael, the claim was rejected.

In *The Anna*, (5 Rob., 373,) a ship under American colors, captured near the mouth of the Mississippi, a claim having been made, under direction of the American ambassador, for the ship and cargo, as taken within the territory of the United States, a mile and a half from the western shore of the principal entrance of the river, Sir William Scott said, (p. 385:) "We all know that the rule of law on this subject is '*terræ dominium finitur, ubi finitur armorum vis*,' and, since the introduction of fire-arms, that distance has usually been recognized to be about three miles from the shore." Reckoning the right of territory from a number of little mud islands composed of earth and trees drifted down the river, he restored the vessel and cargo, it not being "denied that the

actual capture took place within the distance of three miles from the islands."

In *The King* vs. 49 *Casks of Brandy*, (3 Hag., 257,) decided in 1836, Sir J. Nicholl said: "As between nation and nation, the territorial right may, by a sort of tacit understanding, be extended to three miles; but that rests upon different principles, namely, that their own subjects shall not be disturbed in their fishing, and particularly in their coasting trade and communications between place and place during war; they would be exposed to danger if hostilities were allowed to be carried on between belligerents nearer to the shore than three miles."

In the case of *The Leader*, (1 Swabey, 42,) decided in 1856, Dr. Lushington said: "Neither in law nor in common parlance is the high sea, at a greater distance from the shore than three miles, called the United Kingdom."

In a subsequent case, (1 Swabey, 238,) the same learned judge said: "In the case of the Leader, I expressed my opinion that where the service was performed within three miles of the coast, which is the best exposition I could give of the expression of the statutes, 'in the United Kingdom.'"

The recent and authoritative English work, *Deane on Blockade*, published in 1855, explicitly states that the territorial jurisdiction is limited to a marine league. (Int., p. xvii.)

The rule which extends and restrains the territorial sea to three miles rests, at the present day, quite as much upon the grounds stated by Sir John Nicholl in the case just cited, as upon the distance to which a cannon shot fired from the shore will reach. Those grounds are the right of protection from disturbance in fishing and in the coasting trade and other near-shore communications. The territorial dominion over the open sea being, by common consent, fixed at three miles, nations whose waters lie contiguous to each other have, by

treaty stipulations, agreed to respect that dominion within those limits, so that the people of each might pursue their appropriate business therein without disturbance to the other.

Thus, by a convention concluded between France and England in 1839, it was agreed that French subjects should enjoy the exclusive right of fishing along the whole extent of the coasts of France, within the distance of three geographical miles from the shore, at low-water mark; and that British subjects should enjoy the same exclusive right along the whole extent of the coasts of the British islands, within the same distance, the distance of three miles, limiting the exclusive right of fishing upon the coasts of the two countries, to be measured, in respect to bays of which the opening shall not exceed ten miles, by a straight line drawn from one cape to the other. (Annales Maritimes et Coloniales, 1839, 1st partie, p. 861; Wheat. Int. Law, part 2, chap. 4, s. 8, pp. 323, 324.)

And so, by the convention of 20th October, 1818, between the United States and Great Britain, article 1st, it was agreed that the inhabitants of the United States should have, in common with British subjects, the liberty to take fish within certain specified limits on the coast of Newfoundland and elsewhere, the United States thereby renouncing forever any liberty theretofore enjoyed or claimed by its inhabitants to take, dry, or cure fish *on or within three marine miles* of any of the coasts, &c., of her British Majesty's dominions in America not included in the limits specified. (8 Stat. at Large, 248, 249.) In the subsequent discussions as to the interpretation of this treaty, the point of difference between the American and British authorities was as to the right of the latter to exclude American vessels from all their bays, and to prohibit their approach within three miles of a line drawn from headland to headland. (Letter of Mr. Forsythe,

Secretary of State, to Mr. Stevenson, minister at London, 20th February, 1841. Lawrence's Wheat., note 106, p. 325.) But the whole subject was arranged by the treaty of the 5th June, 1854, by both parties relinquishing to each other the liberty of fishing within specified limits, without restriction as to the distance from shore. (10 Stat. at Large, 1089.)

The current of American authority and practice has been equally consistent in recognition of the rule that the territorial open sea extends to a marine league.

Chancellor Kent, after stating the difficulty of drawing a precise conclusion amidst the variety of opinions on the subject, says: "According to the current of modern authority the general territorial jurisdiction extends into the sea as far as cannon shot will reach, and no further, and this is generally calculated to be a marine league; and the Congress of the United States have recognized this limitation by authorizing the district courts to take cognizance of all captures made within a marine league of the American shore." (1 Kent's Com., 29.)

"The maritime territory of every state," says Wheaton, "extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of the sea enclosed by headlands belonging to the same state. The general usage of nations superadds to this extent of territorial jurisdiction a distance of a marine league, or as far as a cannon shot will reach from the shore, along all the coasts of the state." (Lawrence's Wheat. Int. Law, part 2, chap. 4, sec. 6, p. 320. See also Wheat. on Captures, 55.)

Many other American writers on public law, the latest of whom are Halleck (Int. Law, 130) and Upton, (Mar. War and Prize, 346, 347,) state the distance from the shore established by the custom of nations, as the limit of territorial jurisdiction, to be a marine league.

We have seen that the act of Congress of the 5th of June, 1794, section 6, recognizing this limitation, authorizes the district courts of the United States to take cognizance of all captures made within a marine league of our shores. (1 Stat. at Large, 384.) See also Soult *vs.* L'Africaine, (Bee's Ad. Rep., 204,) fully recognizing the rule.

In harmony with this legislative and judicial recognition of the rule has been the action of the Executive department from the foundation of our government. Out of many, a few instances selected from different periods of our history will suffice:

"When the maritime war commenced in Europe, in 1793, the American government, which had determined to remain neutral, found it necessary to define the extent of the line of territorial protection claimed by the United States on their coasts, for the purpose of giving effect to their neutral rights and duties. * * * * President Washington gave instructions to the executive officers to consider it as restrained for the present to the distance of *one sea league, or three geographical miles* from the sea-shore. This distance, it was supposed, could admit of no opposition, *being recognized by treaties* between the United States and some of the powers with whom they were connected in commercial intercourse, and not being more extensive than was claimed by any of them on their own coasts." (Mr. Jefferson to Mr. Genet, 8th November, 1793. Lawrence's Wheat., part 4, chap. 3, sec. 12, pp. 723, 724.)

The President's instructions to private armed vessels commissioned under the act concerning letters of marque, &c., issued by the Secretary of State, Mr. Monroe, during the last war with Great Britain, contained this clause: "The high seas, referred to in your commission, you will understand generally to refer to low-water mark; but with the exception of

the space *within one league, or three miles*, from the shores of countries at peace both with Great Britain and with the United States." (Wheat. on Captures, App., 341.)

On the 14th of August, 1862, the present Secretary of State addressed a letter to the Secretary of the Navy, in which, after referring to a report that the United States ship Adirondack had continued the chase of a British vessel, a blockade-runner, "even within the line of maritime jurisdiction—that is to say, within a marine league of the island of New Providence," he added: "The President desires that you ascertain the truth of this fact with as little delay as possible, since, if it be true, the commander of the Adirondack has committed an inexcusable violation of the law of nations, for which acknowledgment and reparation ought to be promptly made. To guard against any such occurrence hereafter, the President desires that you at once give notice to all commanders of American vessels-of-war *that this government adheres to, recognizes, and insists upon the principle that the maritime jurisdiction of every nation covers a full marine league from the coasts*, and that acts of hostility or of authority *within a marine league* of any foreign country by any naval officer of the United States are strictly forbidden, and will bring upon such officer the displeasure of his government." (Lawrence's Wheat., part 4, chap. 3, note 215, p. 715.)

This is the latest and most authoritative statement of the practice of the American government in its intercourse with other nations in recognition and enforcement of the rule of the marine league, and, following an unbroken line of precedents, beginning with the administration of Washington, notwithstanding the alleged improvements in artillery, it may be accepted in a court of prize as more trustworthy than the opinion of Cauchy or the speculations of Le Nord.

When the rebel privateer Alabama recently sailed out of the harbor of Cherbourg to meet the Kearsarge, a French ship-of-war, for the purpose of protecting the territorial waters of France from violation, *escorted her to the distance of a marine league from the shore.* (Report Sec. Navy 1864, p. 636.) This latest and most impressive example proves that the continental authorities cited by the learned counsel for the claimants have failed to secure from the leading continental maritime power that approval of their proposed innovation on public law which is asked for them in this court.

These, with many other precedents which might be cited, show that the rule of the marine league is practically established in fact, if not in form, as Azuni declared it ought to be, on the basis of a treaty between the great maritime powers of the world, especially between the United States and Great Britain, and to abandon or change it now, by enlarging its limits, would not only restore the evil which that great writer so earnestly deprecated, where "the strongest would give law to the weakest," but would surely, at no distant day, plunge the maritime powers of the world into war.

It must not be forgotten that the early controversies which forced the great maritime powers to adopt the fixed limit of the marine league as a definite and easily applied rule of public law, grew out of the extravagant claims of some of them to an enlarged or absolute dominion of the seas. But if, in the infancy of commerce, the troubles springing from these claims compelled the adoption by common usage or solemn convention of a fixed or definite rule of distance which could be ascertained without question, who could estimate the number or extent of national controversies which would now arise, since the increased energy, intelligence, and capital of commercial nations, and the improvements in navigation by steam and otherwise, have filled every sea with maritime ad-

venture, if that rule were to be abandoned and the uncertain results of modern artillery experiments substituted for it? Whatever may have been its original foundation, the great value of the rule consists in this, that it furnishes a certain and easy method of determining every question of invasion of the territorial sea, and it is consecrated by long and unquestioned usage, by means of which and of statutes, decisions, and treaty stipulations growing out of it, many rights, powers, and duties have arisen, been conceded and defined.

But we also deny that the modern improvements in artillery have yet progressed far enough to furnish a safe basis for this fundamental change of public law. It may be doubted whether there is a gun in the American or British naval service which can be relied upon for effective service at a greater distance than three miles. The Armstrong gun, from which so much was hoped by Great Britain in extending the effective reach of shot, has been declared by competent authority a failure, and the most intelligent officers in our ordnance service say that the few guns that have secured the long range contended for are practically useless: 1st, Because of the great elevation to which the balls must be projected; and second, because of the constant and unavoidable danger of explosion. It is well known that these causes rendered the recent experiment of shelling Charleston at long range a failure. In fact, the efforts of science in the improvement of artillery are now directed to secure, not the longest range, but the most effective projection of the greatest weight of metal. But the whole subject is as yet one of experiment, from which no definite or certain rule can be drawn, and upon the shifting basis of which this court will hardly attempt to overthrow one of the landmarks of public law.

2d. The objection that the capture was made within a space embraced by a line drawn due south from the nearest

headland on Abaco island, above the place of capture, is not sustained by any known principle of public law. The rule is correctly stated by Wheaton in the passage already cited, (Int. Law, part 2, chap. 4, sec., 6:) "The maritime territory of every state extends to the ports, harbors, bays, mouths of rivers, and adjacent parts of the sea, *enclosed by headlands*, belonging to the same state." Now, even conceding that the capture of the Bermuda was made within a line drawn southwardly from the headland of Abaco island, which lies above the place of capture, still, there is no corresponding headland on the island south of the place of capture by which it could be *enclosed*. The line drawn southwardly from the northern headland strikes nothing but the open sea. It does not even strike any part of any other island in the Bahama group. No authority has been produced or can be found to sustain this objection.

3d. Nor is the objection better founded that the capture was made, not in the open sea, but in the channels between islands belonging to Great Britain. In fact, when captured, the Bermuda had not reached the point where the channel begins. The place of capture was on the east side of Abaco island, certainly seven or eight miles northeast of "Hole in the Wall," and that distance from the only point where a channel could begin.

The only channel in that neighborhood is that made by the waters between Abaco island and Eleuthera island, called Providence northeast channel. We have seen that the Bermuda had not yet reached those waters, and therefore was not in that channel. But we deny that Great Britain has or can have any just claim to exclusive territorial jurisdiction over these waters beyond the marine league from either shore. These two islands are twenty-five miles apart, and the waters between them constitute the highway of nations to the island

of Nassau. Such a claim could only be sustained on pretences like those on which Selden based his long since abandoned claim that England possessed exclusive jurisdiction of the English channel. The claim of the learned counsel in behalf of Great Britain would not be made by Great Britain herself.

4th. But we contend that even if the Bermuda were captured in British waters, the claim for restoration of ship or cargo, on that ground, could only be made by the government of Great Britain or under its authority, and that government not having made or authorized the claim in this case, it cannot be allowed on behalf of the parties who make it.

In the case of *The Etruseo*—Lords, January, 1795—and in other cases, (cited 3 Rob., 162,) it was held that a suggestion of neutral territory cannot be set up *by an individual claimant*, but that it must proceed *from the government* whose territory is asserted to have been violated.

In *The Purissima Conception*, (6 Rob., 45,) a vessel originally British had been captured by the French within a mile of the Spanish coast, on a voyage from England to Malta. She was condemned by the French prize court, the proceedings of which showed the capture to have been made within Spanish territory. She was then sold to a Spaniard, and, after the breaking out of hostilities between England and Spain, was captured by the British. The former British owner put in a claim for restitution on payment of salvage, and his counsel contended that the original capture was unlawful because made within Spanish (neutral) territory, and consequently that the decreee of the French prize court did not divest the original British title. But Sir Wm. Scott said: "As to the point that the ship ought to have received protection from the Spanish government, it does appear, undoubtedly, on the face of the sentence, that the capture was made in a place where the

laws of amity and good faith would impose a duty of protection upon the Spanish government. But it is a known principle of this court that the privilege of territory *will not itself inure* to the protection of property, *unless the State from which that protection is due steps forward to assert the right.* In this instance, the government from which the protection was undoubtedly due *did not think proper* to vindicate those rights, and it is not competent for the party to whom the property belongs to avail himself of the plea."

In *The Eliza Ann and others*, (1 Dod., 244,) certain American ships were captured in Hanoe bay by the British, and claim made under direction of the Swedish minister for violation of neutrality by seizure on Swedish territory. Sir Wm. Scott said: "When a violation of neutral territory takes place, *that country alone* whose tranquillity has been disturbed possesses the right of demanding reparation for the injury which she has sustained. It is a principle which has been established by a variety of decisions, both in this and the superior court, that the enemy whose property has been captured cannot himself give the claim, but must resort to the neutral for his remedy."

In *The Diligentia*, (1 Dod., 412,) Sir William Scott said: "It is an established rule of law, that a claim of neutrality of territory can be made by the neutral government only."

In *The Anne*, (3 Wheat., 435,) this court has recognized and applied this principle in its full extent. The Anna was a British ship, captured by a privateer near the Spanish part of St. Domingo. A claim was filled by the Spanish consul for violation of Spanish neutrality. In the circuit court (on appeal) a claim was filed by the British owner, peace having been meanwhile concluded. The British owner having, by the return of peace, the right to sustain a suit in our courts, it was argued, for him, that the capture made in a neutral territory

was void, and he therefore had a right of restitution. But this court, by Judge Story, said: "A capture made within neutral waters is, as between enemies, deemed, to all intents and purposes, rightful; it is only by the neutral *sovereign* that its legal validity can be called in question, *and as to him, and him only*, is it to be considered void. The enemy has no rights whatsoever; and *if the neutral sovereign omits* or *declines* to interpose a claim, the property is justly condemnable *jure belli* to the captors. And the court even went so far as to hold it was not competent for a counsel, by virtue of his office merely, and without special authority from his sovereign, to interpose a claim for the violated rights of that sovereign. See also Lawrence's Wheaton, page 722.

On these authorities, then, it is perfectly clear that if, as we contend, the appellants stand, in this case, in the relation of enemies—that is, if the captured ship and cargo *are impressed with a hostile character*—they are precluded from claiming restitution on the ground of capture within British territory, the British government not having made such claim. In that event the court will have no occasion even to consider the question of neutral territory.

But even if the court should not hold the property of the appellants to be of hostile character, but to be *bona fide* neutral property, we still contend that even as neutral subjects of Great Britain they cannot claim restitution on this ground, but such claim must be made by their government, and that government not having made it, the question of violation of British neutral territory is not properly before the court.

It will be observed that in all the cases cited, where the question of violation of neutral territory was considered and decided, the claim was made by some authorized agent of the neutral government. It is believed that no case can be found where the question was entertained on the claim of a private

party; and in the numerous utterances of the courts on the subject, no distinction whatever is made between the rights of *private parties*, whether enemy or neutral. The duty of restitution is uniformly placed upon the sole ground that a wrong has been done to the sovereign power whose territorial dominion has been invaded, for which wrong the sovereign power alone can demand redress. Whether it will demand such redress is a question purely in its own discretion, with which private parties, in the particular case, have nothing to do. It may be that its own interests or duties in other respects, its special relations to the nation which has committed the alleged wrong, or some other controlling reason in the public policy it has chosen to adopt, may induce the sovereign power to abstain from demanding redress and waive the question of territorial violation. It may not choose to complicate itself by assuming the position involved in a demand for redress, or it may be unwilling to extend protection to its own subjects in the adventure in the prosecution of which the alleged wrong was committed. If, then, it declines to "step forward and assert its rights," can it be possible that its subject may assert them in his own behalf, without its consent or sanction? Can *any* private party, whether subject or not, force the consideration and decision of a question which concerns the sovereign only, and which the sovereign, for its own reasons, does not choose to raise? If it be true, as Lord Stowell said, "that the privilege of territory will not *itself* inure to the protection of property unless the state from which that protection is due steps forward to assert the right;" and if, as this court has said, "a capture within neutral waters is to be considered void as to the neutral sovereign, *and as to him only*," it is impossible for the court to entertain this claim without assuming to decide upon the rights and duties of the British government in a matter purely of its own concernment and for its own exclusive action, without having been invited by that government to do so.

No better example of the impropriety of such unasked interference is needed than this case affords.

Haigh, the claimant of the vessel, a British subject, after her capture, addressed a memorial to the British secretary for foreign affairs, alleging, among other things, that "The said British steamship, in the course of the prosecution of her lawful voyage from Bermuda to Nassau," was captured by the war steamer Mercedita, on the 27th of April, 1862, "so close to the light-house, on the southern point of the island of Abaco, as to be within British waters;" that the said seizure "was an infringement of the rights of a neutral power," and "that restitution ought to be made by the said federal government of the property so unlawfully seized," and praying "that an application may be made by her Majesty's government for restitution by the said federal government of the property so unlawfully seized," &c. (Record, pp. 124, 125.)

This memorial was sworn to by Haigh in the year 1862, a copy of it having been filed in the district court 26th August, 1862. It must, therefore, have been brought to the attention of the British government long before the decree was entered in that court, 5th March, 1863. But no claim was filed in the case by or at the instance of the British government, nor has that government ever interfered in these judicial proceedings. It has, therefore, declined to avail itself of its exclusive right to demand restitution for the alleged violation of its neutral territory. Will this court, then, adjudicate that right in the face of that declination?

The reasons why the British government has declined to make this claim for restitution at the instance of Haigh are not disclosed. But it is quite probable that it does not choose to assert, in the face of its own uniform recognition of the rule of the marine league, and of the repeated judgments of its courts in support of that rule, that it ought now to be abandoned, and

the uncertain results of artillery experiments substituted for it. It is also probable that it does not choose to surprise the world and disturb the peace of nations by making claim to exclusive territorial jurisdiction over the waters which form the great highway through the Bahama islands to the island of New Providence. And yet an American court is now asked, without her consent, to concede these points in her favor.

But another reason peculiar to this case, why that government has declined to interfere, is, doubtless, found in the fact that it believes, as we do, that these claimants were engaged in illicit and forbidden trade with the enemy of a nation with whom it was then, and is now, at peace. By proclamation of 13th May, 1861, the Queen of Great Britain declared her neutrality in the existing contest between the United States, and warned her subjects, among other things, "against breaking, or endeavoring to break, any blockade," or "carrying officers, soldiers, despatches, arms, military stores, or materials, or any articles considered and deemed to be contraband of war," for the use of either party, on peril not only of her own statutory penalties, but of *forfeiting her protection* against any liabilities, and also of incurring her high displeasure. (Lawrence's Wheaton, note 210, p. 698.)

The Bermuda, if actually owned by British neutrals, was, when captured, engaged in an expedition of the class denounced and forbidden by this proclamation, whether she meant herself to run the blockade or only to carry her cargo, largely contraband, and certainly destined for a blockaded port, as far as Nassau, for transshipment there. This is proved by the fact that when certain ship-owners at Liverpool remonstrated to Earl Russell against the "blockade" (as they called it) "of the British port of Nassau" by federal cruisers, and "*making prizes of British vessels sailing from one British port to another with British goods, though such vessels were*

perfectly innocent of any attempt to run the blockade," his lordship, through the under secretary of state, replied (5th July, 1862) that he could not be surprised that the cruisers of the United States should watch with vigilance a port said to be the great *entrepot* of blockade-running commerce; that her Majesty's government had no reason to doubt the equity and adherence to legal requirements of the United States prize courts, but he was aware many vessels were subject to harsh treatment; *that the true remedy would be that the merchants and ship-owners of Liverpool should refrain from this species of trade,* which exposes innocent commerce to detention and search; produces irritation and ill will in the northern States of America; *is contrary to the spirit of her Majesty's proclamation,* and exposes the British name to suspicions of bad faith; and he closes by observing that it was the duty of her Majesty's subjects to conform to the proclamation, &c. (Lawrence's Wheaton, note 216, p. 718.)

This plain language, in connexion with the fact that the British government declined to accede to the demand of Haigh, but left his vessel to take its chances in the prize court, raises an irresistible inference that that government was unwilling to extend its protection by making the claim, which none but it could make, for restitution for violation of territorial rights in behalf of a vessel "which had forfeited that protection by engaging in the trade" forbidden by the proclamation. And this is a significant comment upon the real character of that vessel and its expedition.

But whatever the motive of the British government, it is enough for our purpose that it declined to lend its aid to raise the question of violated territory, and it is, for that reason, not before the court.

In conclusion, it is to be observed that if the sovereign whose territory is violated by the capture intends to demand

redress therefor, the demand must first be made in the prize court where the validity of the capture is adjudicated and this for the sufficient reason that the redress to be demanded is chiefly restitution of the vessel and cargo, which can only be made by the judgment of the prize court, and not after that judgment has been pronounced. It would be gross injustice to the government of the captors if the injured government were to quietly await the action of the prize court without raising the question of territorial infringement, and, after the capture had been held good on other grounds, to demand compensation from the captor's government for the alleged wrong. No government would or ought to submit to such a demand.

Accordingly, it will be observed that in all the cases in which the question of capture within territorial limits is considered, it is raised by the direct interposition, *in the prize court*, of the injured government.

There can, therefore, be no claim for redress by the British on our government after this case has been finally decided by this court.

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APPENDIX.

The first volume of the Diplomatic Correspondence of the United States, transmitted to Congress with the President's annual message of December 8, 1863, (Ex. Doc. No. 1, of 38th Cong., 1st sess.,) shows—

1st. That the Bermuda was fitted out as a blockade-runner. (Letter of Consul Morse to Mr. Adams, December 24, 1862, 1 Dip. Cor., 1863, pp. 51, 52.)

2d. That Fraser, Trenholm & Co. were not only "one of the firms most largely engaged in this mode of rendering aid to and sustaining the rebellion," (1 Dip. Cor., 1863, p. 52,) but were *the authorized disbursing agents of the rebel government in England*, actively employed in fitting out both blockade-running vessels and piratical vessels to prey on our commerce under the rebel flag.

The following portions of the diplomatic correspondence, all contained in volume 1 of the Diplomatic Correspondence, 1863, are referred to:

Letters of Mr. Adams to Mr. Seward, January 1, 1863, and Mr. Adams to Earl Russell, December 30, 1862, p. 53.

Letter of Mr. Memminger, rebel secretary of the treasury, to Mr. Mason, rebel commissioner, of October 24, 1862, in which, after informing him of the appointment of Mr. James Spence, of Liverpool, as financial agent, he adds, "Mr. Spence is directed to confer with Messrs. Fraser, Trenholm & Co., who had previously been made our depositaries at Liverpool," p. 83.

Letter of Mr. Memminger to Mr. Spence, October 21, 1862, directing him to confer with Messrs. Fraser, Trenholm & Co., "depositaries under law" of the Confederate States, relative to certain financial arrangements, p. 90.

Letter of Mr. Memminger to Fraser, Trenholm & Co., October 24, 1862, acknowledging their letter of July 21, "advising sales per *Economist*, and balances to the credit of the treasurer of the Confederate States," &c., pp. 90, 91.

Letter of Mr. Memminger to Fraser, Trenholm & Co., October 28, 1862, p. 91.

Letter of Mr. Adams to Mr. Seward, February 9, 1863, relative to foregoing letters, pp. 132, 133.

Debate in British Parliament, p. 203.

Letter of Mr. Dudley to Mr. Adams, March 24, 1863 transmitted by the latter to Earl Russell, March 26, 1863 showing that Fraser, Trenholm & Co. had built at Liverpool, for rebel use, the steamer Phantom, and at *Stockton* (where the Bermuda was built) the steamer Southerner, p. 217.

Deposition of Clarence R. Yonge, paymaster of the rebel privateer Alabama, showing the close connexion of Fraser, Trenholm & Co. with that vessel, pp. 221, 226.

Statement showing that the rebel privateer Alexandra was built for Fraser, Trenholm & Co., p. 230.

Letter of Mr. Adams to Earl Russell, 23d May, 1863, transmitting deposition of James De Costa, showing that Captain Tessier, (formerly of the Bermuda,) who was then in the employ of Fraser, Trenholm & Co., was in command of the Phantom, p. 301.

Letter of Mr. Adams to Earl Russell, with enclosed documents relative to the Phantom, showing that Captain Tessier, employed by Fraser, Trenholm & Co., took out the armament of the rebel privateers Florida and Alabama, pp. 303, 304, 305.

Letter of Mr. Adams to Earl Russell, 6d June, 1863, with documents relative to steamer Southerner, built at Stockton-on-Tees, for Fraser, Trenholm & Co., by Pearse, Lockwood & Co., p. 305–309.

Proceedings of the court of exchequer at *nisi prius*, in the case of the seizure of the ship Alexandra, pp. 333, 335, 336, 337.

Depositions submitted by Mr. Dudley to Mr. Adams, 8th July, 1863, relative to the iron-clad ram building by Laird & Co. at Birkenhead for the rebels, pp. 377, 381, 382.

Proceedings in the court of exchequer, *in banco*, in the case of the Alexandra, showing that the information filed by the Attorney General, claiming the forfeiture of the ship, charged the offence of violating the foreign enlistment act, *inter alia*, on Charles K. Prioleau and James T. Welsman, who are members of the firm of Fraser, Trenholm & Co., and Eugene Tessier, who was then in their employment.—(Sup. Dip. Cor., vol. 1, p. lxxiii)

Intercepted papers of rebel officers.—(Sup. Dip. Cor., vol. 1, p. cxviii.)